

Comments on the subject of exclusive contracts between MDU owners or managers and providers of services to MDU tenants who are not parties to the exclusive contracts

In the Matter of

Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments

MB Docket No. 07-51

Respectfully submitted to the Federal Communications Commission by

Stephen Weinstein

writing solely as a private citizen of the United States of America who was adversely affected by an exclusive contract between the owner of an apartment building and a television service provider, and not on behalf of, or as the representative of, any other person or organization

[Note:

The personal experiences that I describe occurred when I resided at:
701 Mobil Ave., Apt. 239
Camarillo, CA 93010

I currently reside at:
450 E. Daily Dr., Apt. 32
Camarillo, CA 93010

First class mail sent to the former address prior to April 2008 should eventually be forwarded to me. However, it is preferable, especially if the mail is urgent, that it be sent to the latter address.

Anyone reading these comments who is considering moving to either apartment building should be aware that the events described relate to the building at 701 Mobil Avenue (and not the building at 450 East Daily Drive).]

I. Introductory remarks

As a person adversely affected by an exclusive contract between the owner of an apartment building and a television service provider, I was initially encouraged to see a press release stating that the Federal Communications Commission would be reconsidering the subject of exclusive contracts relating to video services provided to MDU residents. However, as I began to read the official notice seeking comments, I was disappointed to see that its discussion focused primarily on the effect on service providers and did not give adequate attention to the detrimental effect that exclusive contracts have on other parties, especially the residents of the MDU properties subject to the contracts. Other adversely affected parties may include broadcasters, television networks, antenna manufacturers and dealers, and any landlords who are too ethical to enter into contracts that are harmful to their tenants. In today's filing, I focus primarily on the effect on tenants, but I encourage the Federal Communications Commission to seek comments from other categories of parties that may be adversely affected by exclusive contracts.

II. Request for procedural action prior to the conclusion of the comment period

The terms of typical exclusive contracts are central to the issue being considered by the Federal Communications Commission. However, parties to such contracts are not likely make a voluntary public disclosure of the terms of contracts if the contracts unreasonably benefit the parties to the contract and are contrary to the interests of third parties, such as tenants. Any contracts that are voluntarily disclosed are likely to be those most favorable to the position of the disclosers and therefore are unlikely to be representative of most exclusive contracts. Therefore, I renew my prior request (originally made in a petition for a declaratory ruling regarding an alleged violation of 47CFR1.4000) for the Federal Communication Commission to compel, by subpoena duces tecum or otherwise, the production of any contract or lease between

Consolidated Smart Systems
620 West 135th Street
Gardena, CA 90248

and any of the following:

Mr. Herbert I. Rosenkrantz
22924 Bluebird Dr.
Calabasas, CA 91302

The Ponderosa Apartments
701 N. Mobil Avenue, #112
Camarillo, CA 93010

The Rosenkrantz Living Trust

or any other parties to exclusive contracts that the Federal Communications Commission selects.

III. Definition and interpretation of the word "competition"

In federal law, "competition" between service providers properly describes only competition for paying customers, not competition for third parties who select exclusive providers without the consent of the customers. Since tenants in buildings with exclusive contracts are, to use the word of one exclusive service provider, "captive" (<http://www.consolidatedsmart.com/property-owners.html>), there is no competition to attract those tenants through lower prices, through superior service, or otherwise.

Proponents of exclusive contracts, such as the National Multi-Housing Council, misuse the word "competition" when they argue that exclusive contracts promote competition by allowing

companies to be in the market who otherwise would not be. The mere existence of multiple providers, if the customers are split according to their residence, each having access to only one provider, will “reduce or eliminate competition [and] provide no plausible offsetting benefits to consumers” (http://www.usdoj.gov/atr/public/div_stats/211491.htm). Continuing to hold out such companies as “competitors” when an agreement or contract ensures that each consumer has only one choice serves only to “mislead and defraud customers” (http://www.usdoj.gov/atr/public/div_stats/211491.htm). In fact, an agreement between two or more companies to divide a market along geographic or other lines and each become the exclusive provider to a portion of that market is punishable as a felonious anti-competitive practice, even if it ensures that each company retains sufficient market share to survive and that no one company becomes the exclusive provider to the entire market. The elimination through market forces of companies whose high prices or poor service is unacceptable to customers, and the possibility of a resulting monopoly for a company that attracts customers through lower prices or superior service, is a normal, expected result of a competitive, free market. As the Department of Justice notes, “when one firm’s vigorous competition and lower prices take sales from its less efficient competitors—that is competition working properly” (http://www.usdoj.gov/atr/public/div_stats/211491.htm). Competition, by definition, requires that it be possible for a firm to lose business to a competitor if it does not satisfy customers; exclusive contracts with third parties eliminate that possibility. An agreement or exclusive contract that ensures that a service provider will be able to be in the market even if its service is inferior or its prices are high does not merely fail to ensure competition; such an agreement inherently prevents competition.

Those service providers that use monetary payments to attract landlords may compete intensely through higher payment rates to entice landlords, and may even compete to charge tenants higher amounts, thereby increasing the amount of the “commission” payments to the landlords. I even concede that some service providers may be more capable of competing in this way, especially those whose poor customer service, undesirable programming packages, or high prices, prevent them from effectively competing to be voluntarily chosen by customers. However, as a matter of public policy, the federal government seeks to encourage businesses to compete for the persons who pay for services and (hopefully) receive those services, not to encourage businesses to compete for third parties who select the service provider and may be paid by the service provider to do so, but neither pay for the service nor use it. If a business cannot survive by competing for customers, then its closure, while tragic to the employees who lose their jobs, is an essential part of a healthy, efficient, capitalist economy, and facilitates the survival and dominance of other businesses that better satisfy their customers. Restrictions on customers that allow a business to survive without satisfying customers, at the expense of both customers and superior businesses, create a false or artificial economy, such as that which was attempted by the Soviet Union.

According to the Department of Justice, “[t]he worst antitrust offenses are cartel violations, such as ... [c]ustomer-allocation agreements [which] involve some arrangement between competitors to split up customers, such as by geographic area, to reduce or eliminate competition [and] provide no plausible offsetting benefits to consumers... [T]he participants mislead and defraud customers by continuing to hold themselves out as competitors despite their agreement not to compete. There can be no doubt that price fixing, bid rigging and customer allocation harm consumers and taxpayers by causing them to pay more for products and services and by depriving them of other byproducts of true competition. Nor is there usually any question in the minds of violators that their conduct is unlawful. It has been estimated that such practices can raise the price of a product or service by more than 10 percent, sometimes much more, and that American consumers and taxpayers pour billions of dollars each year into the pockets of cartel members. People who take consumer and taxpayer money this way are thieves”. (http://www.usdoj.gov/atr/public/div_stats/211491.htm)

While service providers evade the law by obtaining their exclusivity within each MDU through agreements with the landlords instead of with each other, the effect is the same, especially for tenants. Through exclusive contracts with third parties, service providers seek to accomplish indirectly what they cannot lawfully accomplish directly: to ensure that only one provider is available to the customers in each MDU.

In this filing, I use the words “competition” and “competitive” to refer to competition for paying recipients of the services, as the Department of Justice does, and not to refer to competition for third parties, as proponents of exclusive contracts seem to do. For example, when I describe the effect of “competitive pressures” on prices, I refer to the competitive pressures to lower prices to attract (or retain) customers who might otherwise choose a less expensive competitor. Other commenters (such as the National Multi-Housing Council), who write from the perspective of MDU owners and managers, may use the same phrase to mean the opposite: competitive pressure to raise the amount that a service provider charges tenants, in order to give a portion of that increase to the landlord, who might otherwise select a service provider that offers the landlord greater revenue. The latter meaning is not consistent with the federal policy.

IV. Exclusive contracts between service providers and property owners or managers, typically

A service provider may obtain exclusive contracts simply by offering money to landlords or MDU managers, rather than by offering to provide services that are desired by tenants and would otherwise be unavailable. In fact, the holder of an exclusive contract need not even provide the services that would otherwise be available.

An exclusive contract between the owner or management of real property that is not owner-occupied and a service provider typically provides that:

1. The owner or manager of the property will prohibit the tenants from obtaining service, other than from that service provider. At the very least, the prohibition will preclude the signals of competing service providers from traveling through antennas, cables, or wires in common or restricted areas of the building, which is sufficient to prevent them from reaching most tenants. In some cases, tenants are even (illegally) prohibited from operating their own antennas in the portion of the property for which they pay rent and otherwise have exclusive use and control, except over the selection of service providers. (See, for example, petitions separately filed by Continental Airlines [ET Docket No. 05-247] and myself seeking declaratory rulings concerning alleged 47CFR1.4000 violations by our respective landlords.)
2. The service provider will pay money to the owner or manager of the building. The payment or payments may be described using words such as commission, rent, or various other euphemisms, but these are pretexts for what is really either
 - a. a kickback to the party selecting the tenants’ service provider from the service provider who is selected (without the consent of the tenants), or
 - b. a bribe paid by the service provider to the party who determines the rules and restrictions applying to a property, for the purpose of causing that party to impose (on the tenants) a rule or restriction that is intended to protect the service provider from competition by whatever service providers might otherwise be selected by the affected tenants.

The terms of these contracts may not be available to the tenants, who are nevertheless subject to the exclusivity provisions. Additionally, the service provider who makes payments to the other party to the contract most likely recovers the cost of those payments by passing the cost on to the tenants, in the form of higher charges for service. This arrangement allows greater revenue for both the service provider, who obtains more customers and more revenue per customer, and the other party to the exclusive contract, who receives both the tenants’ rent payments and a portion of the tenants’ payments to the service provider. However, it adversely affects the tenants, who must pay higher prices for service and are not allowed to select the provider whose service offerings most closely match their own needs or desires. Additionally, the service providers who otherwise would have been selected by the tenants are deprived of revenue. However, I feel that the effect on other service providers is less critical than the effect on tenants, because the other service providers can focus their marketing efforts on other potential customers (who are at locations not subject to exclusive contracts), but the tenants have no such option. They must either do entirely without service or pay whatever amount is

demanded by the exclusive service provider and accept whatever services are offered by that provider.

V. Illustrative example: Consolidated Smart Systems

A. MDU Buildings other than the Ponderosa Apartments.

Using the search engine "Google", I researched the opinions of other customers of Consolidated Smart Systems who lived in MDU buildings with exclusive contracts. The customers were, without exception, extremely dissatisfied. In particular, nearly all complained of unreliable or delayed service, of being charged more than they had agreed to pay, of being unable to resolve billing disputes, of poor customer service, or of continuing to be charged after they decided to cancel service. Many also complained of the exclusivity or mentioned either a desire for another provider or a decision to move because of Consolidated Smart Systems. The most positive thing that can be said about these customers' opinions is perhaps that only one of them went to the extreme of comparing living in a building where Consolidated Smart Systems had an exclusive contract to living in a Nazi concentration camp. The results of this research appear in Appendix A.

B. The Ponderosa Apartments

After I became a tenant in the "Ponderosa Apartments", an apartment building located at 701 Mobil Avenue, Camarillo, California, I was informed that "Consolidated Smart Systems" had obtained an exclusive contract for the provision of video services. As a tenant in this building, I became aware of the horrific effects that exclusive contracts have on tenants. In particular:

1. Each of the following occurred to such a degree that the exclusive service provider (Consolidated Smart Systems) would have lost all or nearly all its business to competitors, if the exclusive contract did not prevent the tenants from doing business with the competitors of Consolidated Smart Systems:
 - i. Consolidated Smart Systems repeatedly made untrue statements to tenants about what services would be available and what services the tenants would receive,
 - ii. Consolidated Smart Systems repeatedly made untrue statements to tenants about how much they would be charged,
 - iii. Tenants were charged more than Consolidated Smart Systems had told them that they would be charged,
 - iv. The customer service was unacceptable,
 - v. One tenant reported unauthorized credit card charges, and
 - vi. Consolidated fraudulently opened an account in my name at a third company without my authorization to do so.
2. Even though he had stopped his tenants from obtaining internet access from any local cable television company, the landlord hypocritically continued to use an internet service of the cable television company Charter Communications himself, including for e-mail communications in furtherance of his efforts to keep tenants from using cable television companies.
3. Even though one or more service providers advertised services with dual-tuner receivers that were available to persons in buildings without exclusive contracts, Consolidated did not offer dual-tuner receivers to tenants in the Ponderosa Apartments. Therefore, tenants in the building with the exclusive contract
 - i. could only simultaneously watch two different channels if they paid extra for a second receiver and for mirroring, and
 - ii. could only simultaneously watch one channel and record another if they either
 - a. paid extra for the second receiver and for mirroring or
 - b. entered into a two-year service agreement/contract and paid extra for a receiver with an internal DVR recorder

Because of the exclusive contract, Consolidated Smart Systems was not forced by competitive pressures to offer dual-tuner receivers. Dual-tuner receivers would have allowed tenants to simultaneously watch one program and either watch another or record another, but Consolidated did not offer them. In the absence of the exclusive contract, competitive pressures might have caused Consolidated to offer them. Even if it did not so, tenants would have had the option to obtain service from another provider who did offer dual-tuner receivers.

4. The exclusive contract severely reduced customer choice, and not only with respect to television services. For example, prior to the exclusive contract, tenants had the choice of whether to obtain Internet access through the telephone company (Verizon) or through the local cable television utility company (Adelphia or Time-Warner). As a result of the landlord signing an exclusive contract, the building was disconnected from the local cable television utility company (Adelphia or Time-Warner), but Consolidated Smart Systems did not offer internet access to the tenants. As a result, the local telephone company (Verizon) became the only choice for Internet access. (It is somewhat ironic that Verizon, a leading opponent of exclusive contracts for video services in MDU properties, may be an unwitting third-party beneficiary of the exclusive contract in this case.)
5. Consolidated Smart Systems paid the landlord so much that:
 - i. although obligated by 47CFR1.4000 to either ensure that tenants could receive the service that they desired through the central antenna system (provided by Consolidated Smart Systems) without unreasonable increase in cost or allow tenants to use individual antennas within the portion of the property that is within their exclusive use and control, when the landlord was informed that Consolidated was charging tenants more than they had agreed to pay, he unlawfully failed to either involve himself in correcting the overcharges or rescind the rule prohibiting individual antennas (see petition separately filed by myself), and
 - ii. when it became clear that I would not accept the continued misconduct of Consolidated Smart Systems and I admitted that I was pursuing legal action against one of the employees of Consolidated Smart Systems, the landlord or the apartment manager decided to terminate my tenancy rather than abide by the landlord's earlier statement to me that he would break his contract with Consolidated Smart Systems if Consolidated Smart Systems behaved in the manner that I had correctly predicted. (I decided to encourage the federal government to fight against exclusive contracts between Consolidated Smart Systems and landlords and then contacted the Antitrust Division of the Department of Justice over three months before learning of the decision to terminate my tenancy; I am not filing these comments to retaliate for the termination of tenancy.) While I try to look on the bright side of the situation, which is that because I am being forced to move, I will be living somewhere without the scourge that Consolidated Smart Systems has shown itself to be, I am also aware that the next occupant of the apartment will almost certainly also be a victim of Consolidated Smart Systems.
6. Tenants were required to agree to at least three sets of terms in order to receive service, but were not allowed to know all these terms until after accepting some. First, tenants had to agree to the terms of Consolidated Smart Systems before learning the terms of DIRECTV, even though the services of Consolidated Smart Systems were not usable without the services of DIRECTV. Second, only after agreeing to the terms of Consolidated and then being presented with a written agreement with DIRECTV to sign, tenants were to call DIRECTV by telephone to "activate" the receiver, thereby agreeing to additional terms "by activating" (prior to receiving a written copy of the final set of terms).
7. Tenants were required by Consolidated Smart Systems to sign an agreement allowing the apartment manager and Consolidated Smart Systems to enter jointly into the tenants' respective apartments at any time of Consolidated Smart Systems' choosing. Prior to signing this agreement, tenants had the right (under state law) to require advance notice before entry

by the apartment manager, except in emergencies. State law also limited the circumstances in which the apartment manager could enter, even with prior notice. By signing the exclusive contract with Consolidated Smart Systems, the landlord ensured that, in order to obtain television service, tenants would have to agree to something (entry by the apartment manager) that state law prohibited the landlord from requiring directly. However, by using Consolidated Smart Systems to impose the requirement for him, he was able to avoid complying with the intent of the state law, which was to protect tenant's privacy and restrict entry by the apartment manager.

8. Instead of allowing all tenants to compare the exclusive service provider to any other provider based on cost of obtaining whatever channels the customer desired, the representative of the exclusive provider said that comparisons must be made taking into consideration all channels that the exclusive provider desired, even if they were not desired by the customer.
9. Instead of properly comparing providers on the basis of total cost, the landlord and the representative of the exclusive service provider each made a comparison based solely on cost of programming, without considering cost of equipment, and attempted to make it appear that the exclusive service provider was not significantly more expensive than another provider, when the total cost, including equipment, of obtaining service from the exclusive provider was substantially greater than the total cost of obtaining service from the other provider.
10. Consolidated agreed that it would install a splitter so that I could record one program on my VCR while watching another on my television. After I agreed to pay for service and after a receiver had already been installed in my apartment, Consolidated refused to install the splitter that it had promised. As a result, I was unable to use my VCR for its intended purpose of recording one program while watching another. If I had known originally that I would not be receiving the promised splitter, at least one of my decisions regarding my selection of service or programming packages would have been different. I might even have been smart enough to refuse service entirely and either stop watching television or move to somewhere not covered by Consolidated Smart Systems' exclusive contract.
11. Consolidated Smart Systems changed the billing address on my DIRECTV account to the address of Consolidated Smart Systems but failed to pay some of the bills that were sent to its address. As a result, I received a collection call and my service was interrupted, even though every bill that had been sent to my address had been paid. I was told that the matter would be resolved within one day, but was actually without service for approximately two months while waiting for this to be resolved.
12. I requested a copy of the exclusive contract from the landlord, but he refused to provide it.
13. As far as I know, everything provided by Consolidated, with the exception of marketing materials, either (a) was already in the building and did not require any investment, or (b) was available for free to persons who were not subject to exclusive contracts. In other words, the only investment by Consolidated was whatever Consolidated spent on marketing materials, paid to the landlord, or paid for what would have been free if not for the exclusive contract. Nevertheless, tenants were required to pay a considerable amount to Consolidated, in addition to being required to pay DIRECTV the same amount as the tenants' total costs would have been if the exclusive contract did not prevent the tenants from acquiring everything they needed directly from DIRECTV, without using Consolidated.
14. The exclusive provider offered only digital service, which was not compatible with some existing equipment that I owned; the prior provider had offered a choice of both digital and analog service.
15. I was told that even to receive only local channels (which would have been free with an off-air antenna), I would have to pay \$11.95 per month. I agreed to do so, but was charged over \$40 per month, even though the agreement was for \$11.95 per month. (I had previously agreed to pay more for a different service or package, but revoked that agreement when the exclusive provider refused to install the splitter.)
16. Another tenant told me that he or she was also charged more than he or she agreed to pay. This person also complained about the number of bills per month (not just the amount), which seemed silly to me, but was apparently a real problem for this person, whose child-care and employment responsibilities left little time for writing and mailing checks.

17. Consolidated Smart Systems fraudulently used my name to enter into an agreement with DIRECTV pertaining to the minimum length of time for which I would be required to keep service and the amount that would be paid for this time. This amount of time was over ten times the minimum then required by DISH Network, a competitor of DIRECTV, with lower prices than DIRECTV. The monthly amount in this agreement was over twice the amount that I had agreed to pay if no splitter was provided.
18. The landlord later admitted that he had negotiated with Consolidated Smart Systems to have me be charged \$11.95 per month for the first few months, but not for subsequent months. However, he waited until several months after I had agreed to the service (and after I was locked into continuing to pay for the service, whether or not I considered the price acceptable), before telling me that the price I had been offered was only temporary.
19. Another tenant told me that Consolidated Smart Systems had made unauthorized charges to a credit card account.
20. Because each tenant needed to have accounts with both DIRECTV and Consolidated Smart Systems, it was considerably more difficult to resolve billing disputes than would have been the case if only one party (other than the customer) had been involved.

Although landlords may not admit to receiving payments from exclusive service providers, for fear of angering their tenants, Consolidated Smart Systems acknowledges this disturbing practice. On its business cards and its website, it describes itself to landlords as “Your Proven Resource to Increase Ancillary Profit” first, rather than as a resource to provide services that would attract tenants and thereby increase profits from rents paid by residents. (The word “ancillary” was probably selected because it is obscure enough to keep less-educated tenants from realizing what is being communicated to landlords.)

Consolidated also tells MDU owners “you have a captive audience of resident consumers” (<http://www.consolidatedsmart.com/property-owners.html>). The statement that landlords “have” tenants, like one has a car or any other thing of property, unintentionally alludes to feudal times, when landlords held the legal right to keep their tenants from leaving the property, and persons who did not own land had only slightly more freedom than slaves did. The word “captive”, which is normally reserved for hostages and prisoners, was appropriately chosen here.

After giving the entire matter great thought, I have concluded that no company that treated customers in the manner that Consolidated Smart Systems treats its customers could survive without exclusive contracts. I feel that that the Federal Communications Commission should prohibit exclusive contracts between providers and landlords for at least two reasons:

1. So that competitive pressures force service providers to treat their customers decently, and
2. So that customers who, for any reason, find a provider unsatisfactory have the option to switch to a provider that they find more acceptable, without having to move to a new residence.

VI. Third parties who may be adversely affected and from whom comments should be sought

The Notice of Proposed Rule Making in general, and paragraphs 7 and 8 in particular, focus primarily on the effect of exclusive contracts on service providers. While I do not address in detail the merits of the discussion in paragraphs 7 and 8 concerning the effect of exclusive contracts on other service providers, I feel that this is a minor point, analogous to discussing the air pollution created by getaway cars when deciding whether to prohibit bank robberies. The disadvantaged service providers can always offer their services at locations not subject to exclusive contracts, but the customers have no such option. They must either do entirely without service or pay whatever amount is demanded by the exclusive service provider. Customers, not competing providers, are the real victims of exclusive contracts.

In addition to MDU residents, other persons may be adversely affected by exclusive contracts between television service providers and MDU owners or managers. As part of the rule making process, the Federal Communications Commission should solicit comments from interested third parties. While I have not prepared an exhaustive list, some examples of potentially affected third parties include:

1. Local broadcasters or broadcast networks (CBS, NBC, ABC, PBS, Fox, etc.) whose signals are unable to reach tenants who are prohibited from operating their own antennas and elect not to subscribe to the services of the exclusive service provider,
2. Local broadcasters or cable networks whose programming is not carried by the exclusive service provider,
3. Antenna manufacturers and dealers who cannot provide goods or services to tenants who are prohibited from operating antennas from any party other than the exclusive service provider, and
4. Landlords who correctly determine that it is unethical to enter into exclusive contracts without the consent of the affected tenants, but cannot compete effectively against landlords who exploit potential tenants' ignorance by deceptively advertising an apparently lower rent in buildings where the actual total cost (including television service) is greater than in buildings without exclusive contracts.

VII. Prior submissions in favor of exclusive contracts

1. Paragraph 2 of the Notice of Proposed Rule Making notes that "other commenters argued that exclusive contracts were necessary to enhance their ability to recover investment costs." This argument is absurd because exclusive contracts essentially eliminate investment. A company with an exclusive contract has no incentive to invest in improving service, because customers have no choice but to accept whatever service that provider chooses to make available, even if the customers desire a different service offered by another provider. A provider will invest only if faced with competitive pressures from a provider who offers something that cannot be provided without an investment.
2. Paragraph 5 of the Notice of Proposed Rule Making refers to a prior "ex parte statement" of the National Multi-Housing Council, which has also publicly announced its intention to "submit [further] comments on the [proposed] rule by the June 18 deadline as part of the RAA [Real Access Alliance]". The members of the National Multi-Housing Council presumably include landlords who receive substantial payments from exclusive service providers. These landlords have a financial interest in preserving the exclusive contracts, so that they can continue to receive whatever payments or other compensation is specified in these contracts. I believe that the submission of the National Multi-Housing Council is motivated solely by a desire to protect the revenue its member landlords derive from exclusive contracts. For whatever reason, the National Multi-Housing Council has historically tried to prevent tenants from choosing their own television service providers and to prevent the Federal Communications Commission from providing tenants with the same legal protections that property owners enjoy. To this day, it boasts at <http://www.nmhc.org/Content/ServeContent.cfm?ContentItemID=1294> of unsuccessfully suing to attempt to stop the Federal Communications Commission from expanding the "OTARD" rules (47CFR1.4000) to protect both tenants and property owners, instead of only property owners and not tenants, as had previously been the case. This, and its recurring opposition to "forced access", demonstrates its true agenda: to allow landlords to prevent tenants from selecting service providers. Having failed to accomplish this through litigation that would have allowed landlords to prohibit all individual antennas, it now seeks to make its ultimate goal possible through exclusive contracts.

VIII. "[W]hether the video providers entering into such exclusive contracts would be unable to provide service to these MDUs or other real estate developments absent the protections afforded by exclusive contracts"

The statement "[w]e also ask whether the video providers entering into such exclusive contracts would be unable to provide service to these MDUs or other real estate developments absent the protections afforded by exclusive contracts" (paragraph 8 of the Notice of Proposed Rulemaking) is ambiguous:

If the Federal Communications Commission is asking whether those particular service providers would be able to provide service, the answer is “no”. For a variety of reasons, including poor service or high prices, many providers, including Consolidated Smart Systems, would be unable to attract customers without exclusive contracts. Only those service providers who offer acceptable service at competitive prices would be able to provide service if tenants had the option to select another service provider.

However, if the Federal Communications Commission is asking whether those services would be available at all (even if not from the same service providers), then even an unqualified “yes” would not be a strong enough answer. Without exclusive contracts, at least as many service providers, and most likely more service providers, would be able to offer not only the services offered by the exclusive service provider, but other services as well. In the case of the Ponderosa Apartments, prior to the exclusive contract, the local cable television utility company was providing the services offered by Consolidated Smart Systems, and more, without an exclusive contract. In fact, the exclusive contract resulted in the elimination of services that were previously available and would have remained available in its absence. The effect of the protections is, quite simply, to allow the service provider to refuse to offer services that it would be unable to refuse to offer, absent the freedom from competitive pressure that it enjoys with the exclusive contract.

IX. “Unfair or deceptive acts or practices”

Paragraph 9 of the Notice of proposed rulemaking states “We also seek comment on how we should define what constitutes “unfair methods of competition or unfair or deceptive acts or practices”. While it is impossible to enumerate every possible unfair or deceptive act, I would like to address two of the most important:

1. To ensure that exclusive providers do not take advantage of the exclusivity to charge customers more than the customer and provider have agreed, customers should be guaranteed the right to obtain service from any provider if the exclusive provider charges more than agreed. In other words, all exclusive contracts should be required to continue provisions that nullify the exclusivity in the event of fraud or overcharging. The customer must be allowed to invoke this provision without the consent of any other party, especially any party who receives payments from the exclusive service provider to keep the exclusivity in place.
2. Landlords who enter into exclusive contracts should be required to disclose to every potential tenant both the existence of the exclusive contract and the actual cost of service to tenants. Otherwise, the landlord competes unfairly against other landlords. This is especially true if the landlord with an exclusive contract uses the revenue from an exclusive contract to offer seemingly lower rents, when the total cost of rent and television service is greater.

X. The Federal Communications Commission’s authority, especially with respect to existing exclusive contracts

Paragraph 10 of the Notice of Proposed Rule Making asks whether the Federal Communications Commission has the authority to declare existing contracts void or voidable and whether there are constitutional considerations.

A. Prior order of the Federal Communications Commission prohibiting certain exclusive contracts between building owners and video service providers

The Federal Communications Commission previously adopted rules that gave tenants the right to install individual antennas on leased property under the exclusive use or control of the viewer (In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996, Second Report and Order, CS Docket No. 96-83, FCC 98-273) and noted that by doing so it was making existing exclusive contracts unenforceable to the extent that they prevented the exercise of this right. Having established its authority, the Federal Communications Commission should also find that the right to select one’s own service provider should not be limited to persons with

exclusive use and control of a location suitable for an antenna. It would be illogical to uphold contracts that require tenants to use antenna-based services exclusively and prohibit use of cable television company services, after having declared contracts that require tenants to use cable television companies exclusively and prohibit use of antennas unenforceable. Such inconsistency would put cable television companies at an unfair disadvantage relative to antenna-based service providers.

B. Constitutional considerations

The issue is essentially whether the government can authorize another party to compete against a party who claims a contractual right to be an exclusive service provider. The case law on this issue goes back at least to *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 1837. In this case, one party claimed to have the right to be the exclusive transporter of persons across a section of the Charles River under various contracts, one of which dated back to 1650, more than a century before the creation of the United States, while the other party claimed that this exclusivity had been voided by an act of the Massachusetts legislature. The United States Supreme Court ruled in favor of the latter party, finding that, even where a service provider is "utterly ruined" by competition, the state interest in ensuring that citizens have access to what is "new and better" is "necessary to their well being and prosperity" and allows the government to end the exclusive provider's exclusivity (*Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 1837).

C. Criminal law

With limited exceptions, exclusive contracts that monopolize or restrain trade are illegal and entering into such a contract is a felony (15 U.S.C. Sections 1-3). Unlike an exclusive contract between a service provider and the recipient of the service, an exclusive contract between an MDU owner and a service provider restrains trade between other service providers and the tenants in the building and provides the exclusive service provider with a local monopoly over the market consisting of the building's tenants. The proper question is not whether the Federal Communications Commission has the authority to prohibit such contracts; but rather whether it has the authority to allow such contracts. If the Federal Communications Commission had not allowed such contracts, they would already be prohibited by the Sherman Antitrust Act. If the Federal Communications Commission lacks jurisdiction in this area, then its prior decisions to allow such contracts must be overturned, and all such contracts ruled illegal.

D. The Communications Act of 1934

The United States Congress established the Federal Communications Commission expressly "to make available, so far as possible, to all the people of the United States, without discrimination... service with adequate facilities at reasonable charges" (47 U.S.C. 151). In other words, Congress intended the Federal Communications Commission to further the ability of citizens who desire to access communications networks to do so, not to further the interests of third parties who seek to profit by restricting that access. In addition, upholding exclusive contracts that restrict only residents of rental property would have a disparate impact on African-American, who are statistically less likely to own their own homes than Caucasians are, and would therefore violate the "without discrimination" provision as the word "discrimination" is now interpreted by the courts.

Organizations such as the Real Access Alliance and the National Multi-Housing Council represent the interests of MDU owners or other parties to exclusive contracts, not the interests of tenants. When these organizations submit comments favoring the preservation of exclusive contracts that apply to MDU properties, the Federal Communications Commission must remember that it lacks clear statutory authority to consider the interests of those landlords who enter into exclusive contracts restricting their tenants to a single service provider, but not restricting the landlords from using (at their own, non-MDU residence) another service provider that their tenants are not allowed to use. (This conclusion stems not from the hypocrisy of the

landlords, but from the fact that the contracts in question do not affect the landlords' ability to receive service, only the tenants' ability to do so. The statutory language only authorizes consideration of the interests of the users of the service.)

E. Contract law

In 1998, the Federal Communications Commission found that parties entering into exclusive contracts to provide video services to residents of rental property would no longer be protected from competition from providers whose services could be received with individual antennas (In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996, Second Report and Order, CS Docket No. 96-83, FCC 98-273). Service providers were even warned that they would not even have exclusivity with respect to tenants who lacked exclusive use and control of any outdoor space, because the development of devices capable of receiving signals indoors was anticipated (as above, paragraph 2). Therefore, no one entering into an exclusive contract after 1998 acquired any reasonable expectation of freedom from competition. Any contract to the contrary is defective as a matter of law. As the Federal Communications Commission itself has previously noted (as above, paragraph 28), the power that it was granted by Congress to regulate the television services industry takes precedence over private contracts, according to the interpretation of the Constitution adopted in *Connolly v. Pension Benefit Guaranty Corp.*:

“Contracts, however express, cannot fetter the constitutional authority of Congress. Contracts may create rights in property, but when contracts deal with a subject matter which lies within the control of Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them.

If a regulatory statute is otherwise within the powers of Congress, therefore, its application may not be defeated by private contractual provisions. For the same reason, the fact that legislation disregards or destroys existing contractual rights, does not always transform the regulation into an illegal taking.”

F. Conflict with state laws

Especially in matters of commerce that involve goods or services that originate in a different state than the recipient or are provided to residents of multiple states (such as nationally distributed television programming), federal law is supreme and supersedes or preempts state law in the event of conflict.

In particular, Congress specifically established the Federal Communications Commission for the stated purpose of “centralizing” authority previously granted to multiple agencies (47 U.S.C. 151). Abrogating this responsibility in favor of allowing decisions to be made at the state level is contrary to the unequivocal language enacted by Congress.

The Federal Communications Commission has already imposed a regulation (47CFR1.4000) prohibiting state laws that impair an antenna user's ability to receive the television services desired by the user. The Federal Communications Commission should do the same with respect to any state law that impairs an MDU tenant's ability to receive the same services.

While the legal basis for federal preemption of state law is the Constitution's statement that it, and federal laws enacted pursuant to it, shall be the supreme law of the land, there are more practical reasons as well:

- A patchwork of differing regulations in different states, and even in different municipalities within a state, creates a greater regulatory burden for businesses than uniform federal regulation does. Even if the state or local restrictions are individually less burdensome than the proposed federal regulation, the need to monitor legal developments in a variety of jurisdictions and comply with all the various restrictions prevents many small businesses from operating in more than one state at a time. The best way to understand the problem is to imagine the

confusion that a person driving across the country would face if the laws regarding which traffic light colors indicated whether to go or stop, on which side of the center of the road one should drive, whether speed limits signs were in miles per hour or kilometers per hour, etc., were different in every jurisdiction. Almost any uniform set of rules is superior to a chaotic situation in which an operator must spend more time stopping for legal consultations than advancing.

- To take advantage of less stringent laws, businesses often establish a legal “home” far from the states in which they actually operate. For example, GE Capital legally established a subsidiary in Georgia (Monogram Bank) to charge higher fees on consumer debt than were allowed by the laws of the states in which the loans were made, although its defense ultimately failed on a technicality related to the definition of being “in the business of receiving deposits” [Heaton v. Monogram Credit Card Bank, 297 F.3d 416 (5th Cir. 2002)]. A consumer who desires the protections of the laws of his or her own state should have the option to select only business willing to abide by that state’s laws. Exclusive contracts between landlords and service providers from other states prohibit tenants from obtaining service other than according to the laws of the state selected by the service provider, which may differ from those of the consumer’s own state.
- States may tailor their laws to give businesses from that state an unfair advantage over competitors from outside that state, especially those from other states. While the constitutionality and ethics of this practice are debatable, the policy of the federal government has historically been to discourage it and favor fair competition between businesses located in different states within the United States. The European Union goes even farther by imposing directives that harmonize laws of member countries on a variety of subjects, including radio interference, product safety, and environmental issues, and eliminate not only local discretion, but national discretion as well. Although not subject to these directives, the United States is a signatory nation to a number of treaties and international agreements, such as GATT and NAFTA, that prohibit it from allowing certain state or local laws that put foreign businesses at an unfair competitive disadvantage. For example, when the federal government required that gasoline be formulated to reduce certain emissions, and a state then passed a law prohibiting a particular emission-reducing additive (MTBE) that was produced in Canada, the state law was challenged (by requiring that an additive be used and yet prohibiting the imported additive, the federal and state government had effectively required the use of a domestic additive). Similarly, a foreign government could legitimately challenge any decision that allowed state laws favoring local holders of exclusive contracts over foreign corporations seeking to provide satellite service to MDU residents.

XI. Whether “to regulate exclusive contracts entered into by MVPDs other than cable operators” (paragraph 10 of the Notice of Proposed Rule Making)

If a regulation applied only to exclusive contracts entered into by cable operators, and not those entered into by any other service providers, then cable operators would be placed at an unfair disadvantage relative to service providers not subject to the regulation. Therefore, any restriction imposed should apply to all service providers, including both cable operators and other MVPDs, so that cable operators and other MVPDs can compete against each other on a level playing field.

Additionally, exclusive contracts with providers other than cable operators prevent tenants from receiving the services of cable operators. If landlords could continue to enter into exclusive contracts, but not with cable operators, then exclusive contracts with providers other than cable operators would become more common and fewer tenants would be able to receive the services of cable operators.

If anything, it is more essential to prohibit or restrict exclusive contracts with service providers other than cable operators than to prohibit or restrict exclusive contracts with cable operators. First, cable operators are already regulated by local franchising authorities who can intervene when customers have valid complaints. Other service providers can treat customers in any manner and will be subject to almost no regulation if the Federal Communications Commission fails to regulate them. Second, cable operators usually cannot charge tenants in buildings with exclusive contracts more than they charge other customers for the same services, but tenants in buildings where other service providers have exclusive contracts can be charged any amount, usually greater than the amount that providers facing competition for customers charge.

XII. Duration of contracts

Paragraph 11 of the Notice of Proposed Rule Making asks the “durations of existing exclusive contracts”. As a tenant, I do not know, because the terms of the contract were withheld from me. Moreover, from the perspective of a tenant, the duration of the contract does not matter, because the landlord and service provider can renew the contract over the objections of the tenants.

XIII. Cost of providing service to MDU properties

Paragraph 11 of the Notice of Proposed Rule Making asks how the cost of providing service to MDU properties compares with the cost of providing service to other types of property.

The cost per customer of providing service to MDU properties is lower than the cost of providing service to single family homes. This is because the cost of installing either cable or antennas can be split over a larger number of customers. For example, in the previously cited example of the Ponderosa Apartments, a single satellite dish antenna was used to provide service to a 40-unit apartment building. Each single family home with the same service would require its own antenna. (Although each tenant was charged more, not less, than the amount that the tenant would have been charged for the same services if the tenant had a single family home requiring a separate antenna, this was the result of the exclusive contract, not the cost of providing service.) Similarly, the cost per customer of running cable to MDU properties with many customers is a fraction of the cost per residence of running the same cable to a single family home with only one potential customer.

XIV. Risk

Paragraph 11 of the Notice of Proposed Rule Making asks if there is more risk in serving MDU properties than other residences.

While I do not think that the Federal Communications Commission intended the word “risk” to refer to physical danger, I do believe that providers with exclusive contracts to serve MDU properties face a considerably greater risk of physical retaliation from dissatisfied customers than providers serving single family owner-occupied homes do. This difference may be attributable to a number of factors, including misconduct by the exclusive service providers themselves. However, the main difference is that owners of single family homes who are angry at a provider need merely obtain the services of another provider and terminate the services of the original provider, while residents of MDU properties with exclusive contracts have little recourse other than to resort to either vandalizing the provider’s equipment or assaulting its employees. By granting the residents of MDU properties the same remedies for unsatisfactory service that are available to owners of single family homes, the Federal Communications Commission should be able to reduce the risk of retaliatory acts by MDU tenants and thereby safeguard the lives of the employees of the service providers.

XV. Marketing costs

Paragraph 11 of the Notice of Proposed Rule Making asks how the marketing costs of serving MDU properties compare to those of serving other properties.

Providers marketing to MDU tenants can use either a common area (such as a recreation room, a lobby, or even a laundry room) or the apartment manager's office to present their offerings to multiple tenants at once and can use the building's staff to distribute fliers. Providers marketing to single-family homes can only address the residents of one home at a time and must distribute all literature themselves. Therefore, providers marketing to MDU tenants should face lower costs (per potential customer) than providers marketing to single family homes.

XVI. Customer churn

Paragraph 11 of the Notice of Proposed Rule Making asks if customer churn is higher in MDU properties than elsewhere.

Due to exclusive contracts, MDU residents must often change providers when changing residences, even if they do not desire to change providers. Also due to exclusive contracts, MDU residents who are not changing residences must change providers when their landlord enters into a new exclusive contract, even if the tenants do not desire change providers. On the other hand, due to exclusive contracts, tenants who are not moving often cannot change providers, even if they desire to change providers.

XVII. Comparison of prices and services under exclusive contracts to those offered others

Paragraph 11 of the Notice of Proposed Rule Making asks "How do the prices and services offered under the exclusive contracts compare to those offered to other customers?" This paragraph does not explain why the Federal Communications Commission has expressed interest in the prices and services that are offered, rather than those that are actually provided.

My own experience was:

- The prices that I was originally offered were greater than those available to persons not subject to exclusive contracts.
- The services that I was originally offered were inferior to those available to persons not subject to exclusive contracts.
- While I was eventually offered prices that were better than those available to persons not subject to exclusive contracts, the service provider violated the terms of this offer, and I was charged more than persons not subject to exclusive contracts, and more than the amount that I had been offered.

Other tenants told me that they were also charged more than the amounts that they would have had to pay if not for the exclusive contract and more than the amounts of the offers that they accepted.

XVIII. Additional payments made to or by the MVPD in return for exclusive contracts

Paragraph 11 of the Notice of Proposed Rule Making asks if "[a]dditional payments [are] made to or by the MVPD in return for exclusive contracts". When I mentioned the existence of an exclusive contract to a telephone representative of DIRECTV, without mentioning the possibility of payment to or from the MDU or the landlord, she said that she wondered how much the exclusive provider had paid for exclusivity. This suggests that payments from exclusive providers are the norm and that this is generally known even by telephone representatives not directly involved in the exclusive contracts. I also know that payments occurred in the case of the Ponderosa Apartments, because I saw a document near the apartment manager's fax machine that indicated that a "commission" was to be paid, and detailed, for the purpose of calculating the commission, which tenants had agreed to receive service and which programming package they had each agreed to receive. However, I do not know the amount that was to be paid, because the landlord has refused to divulge the terms of the contract. As noted earlier, I request that the Federal Communications Commission obtain this contract by subpoena.

XIX. Possible benefits to consumers

Paragraph 11 of the Notice of Proposed Rule Making asks for comments on circumstances in which exclusive contracts could be benefit consumers.

Hypothetically speaking, if a landlord became aware that a particular service provider was overcharging tenants or was otherwise mistreating tenants, the landlord could ask other tenants who were satisfied with their service provider to identify that different service provider, so that the landlord could enter into an exclusive contract with the later provider to ensure that all tenants received satisfactory service and could not be victimized by the unsatisfactory provider. However, I know of no cases in which this has occurred, and doubt that it is likely to occur in the future. Instead, I have found only cases where landlords entered into exclusive contracts with a service provider who the tenants found unsatisfactory, thereby prohibiting tenants from using the provider that tenants had previously found satisfactory.

XX. "Market Power"

Paragraph 12 of the Notice of Proposed Rule Making asks about market power. From the perspective of a tenant, every holder of an exclusive contract possesses market power. To the tenant, the market consists of the MDU and there are no other competitors in the MDU. Unless the tenant can afford to move to another MDU property in order to obtain a different service provider, the existence of other service providers is of no benefit to the tenant.

XXI. Recent changes in the market

Paragraph 12 of the Notice of Proposed Rule Making calls "for comment on how the video programming market has changed since the issue was last posed in the Inside Wiring FNPRM".

The most significant recent change in the market is the introduction of types of service that do not require use of the coaxial cable of the locally franchised cable television utility. These include, for example, satellite dish antennas and FiOS. These developments change the market in the following ways:

1. Owners of single family homes now have a greater choice of video service providers than ever before. It would also now be possible to offer this same choice to residents of MDU properties, if exclusive contracts did not prevent them from making an individual selection of provider.
2. Telephone companies and franchised cable television companies are subject to regulation by local franchising authorities, state public utility boards, or other governmental authority. At one time, all providers were subject to such regulation, price increases were subject to the approval of the regulating or franchising authority, and customers with complaints could request that the regulating or franchising authority intervene on their behalf. While some customers felt that the rates were too high, they were at least uniform, in that regulated utilities are generally required to charge MDU tenants and other customers the same prices for the same services. Satellite technology now makes it possible for providers to avoid using public rights of way and avoid nearly all regulation, other than that of the Federal Communications Commission. The only limits on what a satellite provider can charge or on how badly a satellite provider can treat a homeowner is the willingness of the customer to refrain from deserting the provider for a competitor. Even those limits do not apply in the case of MDU residents, because of exclusive contracts. As a result, satellite providers are free to charge the MDU residents who they accurately consider "captive" (<http://www.consolidatedsmart.com/property-owners.html>) more than homeowners, who are free to select a less expensive provider, would be willing to pay.

XXII. Perpetual Contracts versus other exclusive contracts

Paragraph 13 of the Notice of Proposed Rule Making calls for comments regarding “perpetual” contracts. The main difference between perpetual contracts and other exclusive contracts is that non-perpetual contracts eventually expire if not renewed. However, because even non-perpetual contracts can be renewed without the consent of the tenant, they become perpetual burdens on the tenant, if the parties to the contract continue to renew the contract over the objections of the tenants. In other words, the opportunity to refuse to renew belongs solely to the MDU owner or management, not the customer. (Non-perpetual contracts may be slightly better in extreme cases in which tenants either stage a rent strike or simply move from the property more frequently than new tenants can be found to replace them. In either situation, the MDU owner or management may decide not to renew the exclusive contract if the loss in rent payments exceeds the value of the contract. However, the tenants who caused the decision not to renew would have to find new housing and would not benefit from the decision.) Therefore, both perpetual and non-perpetual contracts should be regulated for the protection of tenants.

XXIII. Recommendations

Paragraph 11 of the Notice of Proposed Rule Making seeks comments on how exclusive contracts should be regulated. Paragraph 14 solicits comments on the specific rules that should be adopted and the specific practices that should be found unreasonable. While I oppose exclusive contracts that restrict persons who are not parties to the contracts and feel that all exclusive contracts for services provided to tenants should be prohibited, if the Federal Communications Commission fails to do so, then I recommend that it impose the following rules, regulations, or restrictions in an attempt to minimize the damage caused by allowing any exclusive contracts to continue:

1. The language of In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996 Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, CS Docket No. 96-83, Order on Reconsideration, Q.2.88, should be adapted to ensure that tenants subject to exclusive contracts have the same protections available to tenants subject to a requirement to use a central antenna instead of an individual antenna. In other words, a tenant should only be prohibited from obtaining service from another provider if all of the following conditions are met by the provider holding the exclusive contract:
 - i. the viewer receives the particular video programming service the viewer desires and could receive in the absence of the exclusive contract (in other words, to maintain the right to exclusivity, the exclusive provider would be required to offer the programming packages offered by the other provider),
 - ii. the video reception in the viewer's home using the exclusive provider is of an acceptable quality as good as, or better than, the quality that the viewer could receive from the other provider,
 - iii. the costs associated with obtaining service from the exclusive provider are not greater than the costs, including installation, maintenance, and use, that the viewer would incur if obtaining service from the other provider, and
 - iv. the requirement to use the exclusive provider in lieu of the other provider does not unreasonably delay the viewer's ability to receive video programming.
2. The language of In the Matter of Implementation of Section 207 of the Telecommunications Act of 1996 Restrictions on Over-the-Air Reception Devices: Television Broadcast Service and Multichannel Multipoint Distribution Service, CS Docket No. 96-83, Order on Reconsideration, Q.2.89, should be adapted to ensure that tenants subject to exclusive contracts have the same protections available to tenants subject to a requirement to use a central antenna instead of an individual antenna. Specifically, an individual who wants video programming other than that currently offered by the contracted exclusive provider should not be unreasonably delayed in obtaining the

- desired programming either through modifications to the contracted provider's offerings, a contract between the MDU and an additional provider, or by individually obtaining service from a provider who does not have a contract with the MDU.
3. The amount to be paid by the exclusive provider to the MDU owner should be a fixed dollar amount stated in the contract, rather than a commission based on the number of tenants who accept the MDU owner's services or the price of the services that the tenants accept. Commission payments to landlords create an improper incentive for landlords to violate 47CFR1.4000 or otherwise improperly force the tenants to use the exclusive provider.
 4. Exclusive providers should be required to offer all types of service, both analog and digital, that would be available from another provider. If the exclusive contract prevents tenants from obtaining internet access from a provider other than the exclusive contract holder, then the exclusive contract holder would be required to offer internet access.
 5. Exclusive contracts that prohibit use of off-air antennas to receive local channels should only be permitted if the tenants are offered the option to receive for free (without obligation to pay for other channels or equipment) both
 - i. those local channels that can be received for free with an individual antenna, and
 - ii. any equipment necessary to receive those channels that would not be necessary to receive them with an individual off-air antenna.
 6. Exclusive providers should be required to offer all types of receivers that would be available from another provider, including dual-tuner receivers, at a cost not greater than the cost of obtaining comparable equipment from another provider.
 7. If tenants must agree to multiple sets of terms or contracts (for example, one with the equipment provider and another with the programming provider), the parties to the exclusive contract should be required to make full disclosure of all terms and costs of service, whether imposed by the party holding the exclusive contract or by another party, to all tenants at a time that is both:
 - i. sufficiently prior to the time that the exclusive contract takes effect to provide tenants with a reasonable opportunity to fully evaluate all their options, including both the various offerings and the possibility of filing of a legal challenge to the exclusive contract, and
 - ii. sufficiently prior to the time by which the tenants must agree to any of the terms (of any of the companies) to provide tenants or with a reasonable opportunity to evaluate all their options fully, including both the possibility of filing of a legal challenge to the exclusive contract and the possibility of accepting one of the various offerings of the exclusive provider (this portion of the regulation should be worded in such a way as to make clear that failure to disclose even one of the terms of any offering until after the customer must agree to another of the terms is not acceptable).
 8. If the parties to the exclusive contract negotiate or agree on the amount that tenants will be charged, they should be required to fully disclose to all tenants the amount that has been agreed, including any planned or expected increase in the amount that those tenants will be charged, immediately upon the completion of the negotiation or agreement of the amount that those tenants will be charged, whether or not state law otherwise allows this information to be withheld from tenants until a later time.
 9. The parties to the exclusive contract should be required to agree to purchase from tenants any existing equipment that they already own and cannot use due to the exclusive contract, including, but not limited to, individual antennas, cable modems, etc., or to reimburse them for the value of that equipment.
 10. The cost to tenants of service from the exclusive provider should not be permitted to exceed the cost of service from another provider.
 11. Providers holding exclusive contracts should be required to offer tenants the option to obtain service without agreeing to pay any party for service for a greater period of time than the minimum length of time for which they would have to agree to pay in order to obtain service from whichever service provider requires the shortest such term of service

- (in any event, not longer than one month, the minimum term of service available from "DISH Network" and most cable television companies).
12. The parties to exclusive contracts should be prohibited from negotiating with each other to have service provided to a tenant under terms, prices, or conditions contrary to those of an agreement which either party has reached with the tenant, unless specifically authorized by the tenant to do so.
 13. Parties to exclusive contracts should be prohibited from requiring any tenant comparing the cost of the service from the exclusive provider to the cost of service from another provider to consider any other factor or factors, especially the inclusion of any additional services not desired by the tenant.
 14. Tenants should be guaranteed the right to compare the total cost of the service from the exclusive provider to the total cost of service from another provider. In particular, tenants should be guaranteed the right to consider the cost to the tenant for equipment needed to receive service from the exclusive provider or any other cost of receiving and constructively using the service of that provider to accomplish the same tasks as would be possible with the other service, especially any costs to the tenant that would not be necessary with the other service. Parties to exclusive contracts should be prohibited from restricting what costs a tenant can consider. For example, parties to exclusive contracts should be prohibited from requiring tenants to compare services solely on the cost of programming and not on the cost of equipment.
 15. No one, especially any party to the exclusive contract, should be allowed to make any false statement as to the amount that the tenant will be required to pay to receive a service through the exclusive provider. If a party to an exclusive contract states an amount that does not exceed the cost of obtaining the same service from another provider and the actual total amount that the tenant will be charged does exceed the cost of obtaining the same service through the other provider, then the tenant should be entitled to obtain the service from that other provider.
 16. No one, especially any party to the exclusive contract, should be allowed to require the tenant to make any payment that is not primarily for the cost that the recipient of that payment incurs to provide equipment or services to the tenant. In particular, parties to an exclusive contract should be prohibited from requiring tenants make payments that are primarily to recover the cost of any payment from the exclusive service provider to another party to the exclusive contract.
 17. The tenant must be able to receive service without having accounts with more companies than would be required in the absence of the exclusive contract. In other words, if the exclusive provider does not offer all the services that a tenant requires, the exclusive provider would be required to open any accounts with third parties in the exclusive provider's own name. For example, Consolidated Smart Systems would not be allowed to require tenants to have accounts simultaneously at both Consolidated Smart Systems and DIRECTV if a local cable operator offered service that only required a single account per tenant.
 18. No one, especially any party to the exclusive contract, should be allowed to require the tenant to provide a credit card number unless that party also takes adequate precautions to ensure that no unauthorized charges to that credit card occur.
 19. If any holder of an exclusive contract, or any of its employees or agents, makes any unauthorized charges to any account of a tenant, including, but not limited to, credit card accounts and DIRECTV accounts, then the holder of that account should be entitled to rescind any contract with the holder of the exclusive contract and to obtain service from another provider, whether or not the unauthorized charging was intentional, negligent, or accidental. If the unauthorized charging is shown to be deliberate, willful, or negligent, then all tenants should be entitled to rescind any contract with the holder of the exclusive contract and to obtain service from another provider. If the unauthorized charging is shown to be deliberate or intentional, then the matter should be referred for criminal prosecution, in addition to the civil sanctions noted here.

20. No one, especially any party to the exclusive contract, should be allowed to activate an agreement with any third party obligating any tenant to make payments to that third party, without the consent of the tenant, if any of the following are true:
 - i. the amount exceeds the amount to which the tenant has consented in a legally enforceable manner,
 - ii. the amount is sufficient to constitute an unreasonable increase in cost relative to the cost of service from another provider, or
 - iii. the agreement is for a longer period of time than the period for which the tenant has consented to pay.
21. No one, especially any party to the exclusive contract, should be allowed to require that, as a condition for receiving central antenna service, the tenant must waive any tenant right with respect to the actions of the landlord or apartment manager, whether that right exists in federal, state, or common law, including, but not limited to, the provisions of any law relating to entry into the rented premises.
22. Holders of exclusive contracts, and their employees and agents, should not be allowed to treat any tenant in such a manner that the requirement to deal with that particular person or party in order to receive any service is itself an unreasonable restriction on the tenant's ability to receive that service, including, but not limited to, by being sufficiently dishonest to any tenant that the tenant is not able to trust the service provider sufficiently to do business with the service provider without unreasonable risk of further mistreatment; if such treatment does occur, the tenant should be permitted to obtain service from another provider, in addition to pursuing whatever other remedies may exist.
23. As mentioned previously, to ensure that exclusive providers do not take advantage of the exclusivity to charge customers more than the customer and provider have agreed, customers should be guaranteed the right to obtain service from any provider if the exclusive provider charges more than agreed. In other words, all exclusive contracts should be required to continue provisions that nullify the exclusivity in the event of fraud or overcharging. The customer must be allowed to invoke this provision without the consent of any other party, especially any party who receives payments from the exclusive service provider to keep the exclusivity in place.
24. As mentioned previously, landlords who enter into exclusive contracts should be required to disclose to every potential tenant both the existence of the exclusive contract and the actual cost of service to tenants. Otherwise, the landlord competes unfairly against other landlords. This is especially true if the landlord with an exclusive contract uses the revenue from an exclusive contract to offer seemingly lower rents, when the total cost of rent and television service is greater than in the competing MDU that does not have an exclusive contract.
25. Parties to exclusive contracts should not be permitted to use the services of companies that they prohibit tenants from using. Instead, the parties to the contract should be subject to the same restrictions that they impose on tenants. In particular, they should be required to obtain their television and internet services from the company that is the exclusive provider to the tenants. Ideally, this would discourage landlords from entering into exclusive contracts with service providers that they do not expect to provide reasonably good service. At the very least, it should allow them to better understand the complaints made by tenants.

Appendix A: Comments posted on the internet by persons identifying themselves as present or former tenants of buildings where Consolidated Smart Systems is or was the service provider

Warnings:

1. This appendix (A) contains copyrighted material and should not be reproduced in full on the internet or otherwise published in full. The links, my notes, and Appendix B may be made available on the internet or otherwise published. However, the Federal Communications Commission should obtain permission from the copyright holders prior to including any other portion of the Internet postings that I found (indicated by indented text in Appendix A). If permission cannot be obtained, then the content of these postings should be omitted from any publication of my comments. If the Federal Communications Commission desires for the public to be able to view the comments that it is considering and is unable to obtain permission from the copyright holders, it should include the URL's ("links") so that that members of the public with internet access can view the comments themselves at the websites of the copyright holders.
2. The posting found at <http://www.apartmentratings.com/rate/CA-San-Diego-Coral-Bay-Apartments-373844.html> contains a comparison that some readers, especially Holocaust survivors, may find offensive. Reader discretion is advised.
3. Some of the postings contain incorrect spelling or poor grammar. Parents are cautioned not to allow children to read these postings, if they believe that the children are likely to emulate what they read.

Note:

These comments were not selected based on their point of view or their favorability to the position that I am advancing. I simply went to www.google.com, typed "Consolidated Smart Systems" (including the quotation marks), clicked "Search", and went through the links in the order that they were listed until I felt that I had reviewed a sufficient number. I manually screened the results only to remove those that were unrelated to communications services to MDU residences (for examples, those concerning laundry services or public pay phones), Consolidated Smart Systems' own website, those of organizations to which it belongs, and my own postings. Without exception, I have included every remaining posting that I found by this method, provided that the author was a person other than myself and indicated in the posting that the author had ever lived in a property where Consolidated Smart Systems is or was the television or internet service provider. I have included the comments about Consolidated Smart Systems in full, and edited only to remove irrelevant comments, such as complaints concerning mold or noise. I have also included the URL (link) for each original posting so that the Federal Communications Commission can read the full posting, or at least enough to verify that I have not quoted it out of context.

While I concede that the quotations and postings are, without exception, negative, this is because I was unable to find even one case of a paying tenant who had a positive opinion, and not because of screening on my part, other than as described above. The only positive comments that I found, during this search or several prior searches, both on the internet and in personal interviews, were those that Consolidated Smart Systems made about itself on its own website, those of a property owner (not a tenant) regarding laundry services (not television services), comments thanking Consolidated Smart Systems (or an owner or employee thereof) for money (and not for services), and those of the manager of an apartment building with an exclusive contract with Consolidated Smart Systems. I invite the Federal Communications Commission to conduct a more scientific survey of paying customers of Consolidated Smart Systems, but I do not expect the results to be favorable to Consolidated Smart Systems.

I. From <http://www.dslreports.com/reviews/2867> (multiple postings):

1.

👍 (icon for "thumbs up"): **"None that I came across"**

👎 (icon for "thumbs down"): **"Unethical, rude customer service, bad planning & terrible communication"**

➡ (icon, arrow pointing to the right): **"To be avoided at any cost"**

I posted this earlier under "Cable Users" forum. I now have a connection, but will remember the terrible service I got from this company, and the rude people in customer service. I plan to move out of my apartment because of my bad experience, and will never ever have a relationship with this company.

I turned to this forum as I didn't know what else to do. Some months back, a cable provider - Consolidated Smart Systems replaced the earlier service provider. We didn't get to know that till we saw our bills! Later, Consolidated Smart Systems notified that they are changing over to DirectTV (at a higher service cost). During the day the changeover was scheduled, they notified that they are not ready yet, and that there will be no service for about 10 days! It is a month now and we still donot have connection. I have spoken to the apartment management, as well as to Consolidated Smart Systems. This company has the rudest possible customer service - and you can imagine how much help I would have got from their supervisors . They do not have the courtesy to even respond to voice mails (I left a few) or to emails. (Do not spend time mailing them your concern - it will positively go unanswered) Sonterra's apartment management haven't been much help either. My apartment is north facing, and I do not have an option to switch to another service provider. I am really tired with Consolidated Smart Systems - can someone advise me what to do?

2.

Consolidated Smart Systems

I have had the worst experience in my adult life dealing with Consolidated Smart Systems. Thie business practices are very deceptive and unethical. Billing errors started from my first payment which was made via personal check. The monies were removed from my account and deposited in the account of Consolidated Smart Systems (CSS), which CSS mis-applied to another account or lost in a slush fund. It took me three months of daily phone calls, sending in copies of the check and my bank statement before the monies were correctly applied to my account. Thier customer service is unorganized, unprofessional and lacks the basic account discrepancy language or knowledge. Return phone calls never happened from anyone in the company, and again I was leaving daily messages requesting returned calls in order to resolve the issue. It only got worse, to ensure that my account was up-to-date I made a huge mistake and gave CSS my Credit Card number to do automatic monthly payments. I only wish that this information that I am documenting helps someone else to realize just how corrupt this company is and how they conduct business. I truly believe that they are stealing peoples money due to the customer giving up the fight.

- I am now fighting for the return of my money for three (3) charges placed against my credit card in the month of January by CSS. Three separate charges!!! I have not had service with Consolidate Smart System since the third week of December 2006. CSS was doing the conversion to Direct TV and I chose not to participate in their program, again due to their unethical means of conducting business. The conversion program was being done in a very sleazy, slick salesman manner, telling the residents that they to sign-up within a two day period or they would not have TV over the holidays. The property that I reside in has lower income, shut-ins, elderly, single moms with small children and the disabled. The TV is a connection to the world for some of these people. That is one of the reasons why I consider their scare tactic to shut down TV service over a Christmas Holiday very sleazy.
- 3.

Fraudulent charges

- Consolidated Smart systems continues to bill my credit card even though I closed the account last August- 6 months ago! CC Co says they cannot stop these people. They never return phone calls - What can I do?
- 4.

Avoid Consolidated Smart Systems at all cost!!

- I have been rebilled for 3 months after cancelling my account with this company. Over 50 phone calls, none of which ever get returned. Promises to refund my credit card, mail me a check, and other similar claims have been LIES! I am contacting the BBB and my bank about it now.
- 5.

Re: Avoid Consolidated Smart Systems at all cost!!

- Please continue to request the return of yor money from this company. Or they are just stealing our money. I am going through the same ordeal with Consolidated Smart Systems, they have fraudulenlty withdrawn for three charges from my cc in January. I have not had service with this company since the end of December. Consolidated Smart System will not return phone calls and will not provided an account statement. Unethical business practices should be reported to the BBB and Sen McCain's office.
- 6.

👍 (icon for "thumbs up"): **"Marginally better than dial-up, no down time as of yet"**

👎 (icon for "thumbs down"): **"Bad packet loss, huge fluxuations in ping times, no real IP (behind ISP's NAT), expensive"**

➡ (icon, arrow pointing to the right): **"Avoid if at all possible"**

I recently moved to a new apartment complex, which I was dismayed to discover had an "exclusive" deal with an internet service provider called "Consolidated Smart Systems" [[»www.consolidatedsmart.com/](http://www.consolidatedsmart.com/)]. I was very nervous about being locked into a single ISP as I had no recourse if the ISP turned out to be lacking, but being that I had no other choice I gave them the benefit of the doubt. The line I signed up for is the "pro" line which is 1.5mb down/ 512kb up for \$50 a month. First off this is

pretty expensive considering I just came from a Time Warner line that's 4mb down for the same price, but even discarding that the line sucks. It took quite a while considering all they had to do was drop off a modem, but they finally came by and gave me the modem. After I was all hooked up I had to wait another 24 hours before the line was actually active.

Once the line went active I was immediately disappointed with the performance of the line. It's a 1.5/512 line which is slower than I'm used to to begin with but I've had lines of that speed in the past and was satisfied. The first thing I noticed is that browsing the web was really sluggish. I thought maybe I wasn't getting good throughput so I did some speed tests on BBR and was surprised to find that I was actually getting pretty good throughput (about 1mb down and 312kb up). I then did some extended ping tests vs large sites on the internet and quickly discovered the problems. Ping times to google.com for example vary wildly from moment to moment. Ping times to google go from 55ms to 300ms, with packet loss thrown in to make things more interesting. The result is that I can download large files at a decent clip, but negotiating new connections (e.g. browsing the web) is incredibly slow. It feels like I'm on a dial-up connection.

Normally I'd dump this POS carrier like a bad habit and move to something else but alas, I'm stuck. Anyway I thought I'd put this up to warn off future residents of various SoCal apartment complexes to stay away from consolidated smart systems if at all possible.

Here's a snippet from a ping test to dsreports.com (notice the varying ping times):

```
Reply from 209.123.109.175: bytes=32 time=96ms TTL=52
Reply from 209.123.109.175: bytes=32 time=183ms TTL=52
Reply from 209.123.109.175: bytes=32 time=217ms TTL=52
Reply from 209.123.109.175: bytes=32 time=189ms TTL=52
Reply from 209.123.109.175: bytes=32 time=154ms TTL=52
Reply from 209.123.109.175: bytes=32 time=100ms TTL=52
Reply from 209.123.109.175: bytes=32 time=199ms TTL=52
Reply from 209.123.109.175: bytes=32 time=197ms TTL=52
Reply from 209.123.109.175: bytes=32 time=173ms TTL=52
Reply from 209.123.109.175: bytes=32 time=233ms TTL=52
Reply from 209.123.109.175: bytes=32 time=169ms TTL=52
Reply from 209.123.109.175: bytes=32 time=195ms TTL=52
Reply from 209.123.109.175: bytes=32 time=186ms TTL=52
Reply from 209.123.109.175: bytes=32 time=190ms TTL=52
```

So, moving on the next big mark against CSS is that you don't get a real outside IP! All customers are behind a NAT system, which means even if I wanted to I couldn't put up any kind of server what so ever. Can't remote desktop in, can't access didly squat from outside. Very lame.

Bottom line, this carrier is a cheap-o carrier completely lacking in customer care and the only way out is to never get in in the first place!

Edit: Another recent ping snippet:

```
Reply from 209.123.109.175: bytes=32 time=206ms TTL=52
Reply from 209.123.109.175: bytes=32 time=182ms TTL=52
Reply from 209.123.109.175: bytes=32 time=210ms TTL=52
```


Reply from 209.123.109.175: bytes=32 time=204ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=186ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=221ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=233ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=235ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=174ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=206ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=129ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=178ms TTL=52
 Request timed out.
 Reply from 209.123.109.175: bytes=32 time=158ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=128ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=209ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=99ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=116ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=192ms TTL=52
 Request timed out.
 Reply from 209.123.109.175: bytes=32 time=182ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=196ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=208ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=200ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=128ms TTL=52
 Reply from 209.123.109.175: bytes=32 time=170ms TTL=52

.. bah!

7.

I hate Consolidated Smart Systems!

See above...

8.

My Apt Complex is switching to Consolidated Smart Systems

My Apt Complex is switching to Consolidated Smart Systems. We have been told repeatedly with the use of flyers posted on our front doors that; quote "Your community has chosen Consolidated Smart Systems to be your sole Television Service provider. Time Warner will no longer be able to provide ANY television or Internet services when we finish upgrading your community.(Printed in red) Please do not cancel your current cable service, it will disconnect automatically"etc... What can I do about this ? I'm very nervous about this switch due to earning my living with my PC and having a reliable connection to the Internet. Currently my ISP is Time Warner and for cable TV. In addition having cable TV is my only source of entertainment for myself and my family. We do not own a car and are low income. Is there anything we can do about the quality of service from this provider ? I'm afraid we are not going to have with this hack of a company ? Any suggestions what-so-ever ? Can this be stopped ? Please help me, any day now the switch will take place ! We live in Corona, Ca.

II. From <http://archive.tivocommunity.com/tivo-vb/history/topic/86524-1.html> (multiple postings):

1.

I live in an apartment complex in Southern California. About a year ago, a company called Ontera Broadband came in and put a DirecTV dish on top of each building. For ~\$5/month, you could pay Ontera for access to the dish through the building's cable system.

I signed up for this, and also rented a receiver from them for an additional \$9.95/month. Since I didn't plan on being here more than 6 months, it seemed like a good way to go.

A few months ago, Ontera Broadband got bought by a company called Consolidated Smart Systems, based out of L.A. I received no notice of this, I just started getting bills in the mail from this company. The problem with these bills is they are VERY wrong. I get charged twice for service and twice for the receiver every month, not to mention they hiked the prices up on me.

I called Consolidated in September (which is a long distance call for me now!) to complain about the incorrect billing. I spoke to someone in accounting, who insisted there was no billing error. All of my services are listed twice on each bill, but she insisted that was not possible. She finally agreed to have a supervisor call me back to let me know what my account balance actually is. Several days later, I had a short message on my machine saying I owed \$15.65 (which is incorrect, I did not miss any payments).

I called Consolidated again and told them I would continue to pay the correct amount (no more), and again asked that my account be reconciled. I never got a return call.

Eventually my next month's bill arrived, STILL incorrect. Again I was charged double, and they were now saying I owed them ~\$45.00. I again sent what I knew was the correct amount, \$15.65. I again called Consolidated and left messages, and got no call back.

I got fed up, and called to cancel my service. I even installed my own dish and bought a new receiver, so that I do not use their service or receiver. There was of course no answer, so I left an elaborate, angry message stating that I want my service disconnected and that I will not be paying the erroneous figure stated on my bill. Again, I got no return call, so I left the same message again. And again. I gave up.

ANOTHER bill arrives, this time asking for over \$65.00. I call again

and leave my message, but there is still no return call. Which brings me to today. Do I have no course of action here?

These people are charging me incorrectly, and will likely damage my credit rating. I feel like there's nothing I can do here. Any ideas?

2.

Hey, I've had bad experiences with that company too. I just moved to Soco and this company oversees the satellites in my complex. They don't return phone calls. They are extremely ignorant. They generally don't seem to know what they are doing and they want to charge me money each month just to access their lines in the complex. I have a bad feeling and I think I'm going to mount my dish on my balcony.

I would write a stern letter; I agree. Keep as much documentation as you can and see if you can talk to the boss. You might have already tried talking to the boss, though.

Good Luck!

III. From <http://www.apartmentratings.com/rate/CA-San-Diego-Coral-Bay-Apartments-373844.html> (one posting, excluding my own):

This place is horrible.

We had time warner cable with digital recording service (run through cable line).

We are now being forced into contract with consolidated smart systems (which contracts with DirectTV), no longer able to select what provider we would like to go with (NAZI CAMP!!). With this service in order to have digital recording we would have to use the telephone line...guess what, the only telephone jack is in the kitchen that means I would have to run a wire through my kitchen to my bedroom to get the same service!!!

So I brought this up with management, they promptly handed me a complaint form and said good luck!!! They could have installed the telephone jack for god sakes!!!

To boot, consolidated smart systems has you sign a contract for 1-2 years!!! They say hey don't worry if you move direct TV will go with you...guess what, they fail to mention that not many apartment complexes allow you to put a dish up so if you move...hello you are screwed and have to pay for TWO services (kickbacks to coral bay I'm sure!)

Lastly, my car has been vandalized on three separate occasions, parking is inadequate, management is RUDE and incompetent/inflexible and incorrect.

Consol smart systems also said that they would look at the entire installation

issue with the recording service on the TV and if they couldn't do anything they wouldn't charge me.

Well guess what they couldn't even install the boxes because they didn't bring a long enough telephone line to run through my kitchen to living room....yet they had already charged me the day before for both TIVO boxes(hey wait you said I wouldn't be charged until I spoke with someone)...I WAS CHARGED which because they lied to me, bounced my account! PLUS THEY CHARGE YOU TWICE AS MUCH AS DOES DIRECT TV WHEN YOU GO THROUGH DIRECT TV DIRECTLY!!!!

WTF& I can't write any more...trust me...there is SO MUCH MORE!!! ...

[remainder of post deals with other issues, such as mold in the bathroom, that are not apparently related to television service]

IV. From <http://www.apartmentratings.com/rate/CA-Los-Angeles-Wilshire-Royale-Apartments-552114.html> (one posting, excluding my own):

[Discussion of noise, elevators, and various other irrelevant topics]

...Let's talk TV. In order to get more than locals with an antenna you have to do business with a company called Consolidated Smart Systems. That's right, you HAVE TO. And let me tell you, WOW THEY SUCK!! Their customer service is thoroughly untrained/incompetent. I was told when I signed up that installation was free and there was a \$100 rebate on the DVR box I paid \$100 for but when I contacted DirecTV they said there was no rebate during the time I got my service installed. Think I get anything from Consolidated....nope, not a damn thing.

I was also told that the money I was paying at the time of installation included my first two months service and that DirecTV wouldn't be sending me a bill until December. NOT. I got a bill from DirecTV about a week after I setup the service (yes I had to set up the service, their guy just left the DVR never contacted DTV to start programming). And when I called Consolidated to find out what was up they told me those first charges were not for service but for installation and DVR service. I informed the girl I was talking to about what the person who signed me up told me and she didn't know what to say. When I asked to see an itemized bill of what I was charged for she told me I'd have to pay an additional \$3 a month for paper billing. AAARRRGGGHHHH. But what really pisses me off is that I can't just switch to cable. That's right, because the building management, in their infinite wisdom, made an exclusive deal with this company and BANNED THE CABLE COMPANY from the building. So if you want TV you have to deal with these a--holes. So, to wrap up....

[Discussion of size of apartment, amount of rent, etc.]

Appendix B: Affidavit (copy)

A hardcopy of the following affidavit has been separately submitted to the Federal Communications Commission with my notarized signature as part of a petition alleging that a landlord violated the 47 C.F.R., Chapter I, Part 1, Subpart S, Section 1.4000 rights of the petitioner (this appendix does not reflect any developments since the affidavit was originally submitted):

I rented an apartment in the building at 701 Mobil Avenue, Camarillo, CA 93010 and a parking space at the same address and signed an agreement to obey the house rules, [swimming] pool rules, etc. Subsequently, on several days, I arrived, after 7 p.m., to find, on the door to the apartment, notes from a company identifying itself as Consolidated Smart Systems and indicating that cable television service and cable Internet service in the building would be terminated, that the company would offer television service but not Internet service, and that one or more representatives of the company would be in the building on the day on which the note was left, but only until 7 p.m. I telephoned the number that was provided in the notes. While I was on hold, I heard a recording in which the company compared its service, or the cost of its service, favorably to that of cable television, but did not give specific dollar amounts. When I did speak with a human representative, I requested that this telephone representative tell me the cost of the service, but the representative did not do so. I even attempted to find the cost of service on the company's website, but was not successful at the time. I also entered the company's name in an Internet search engine, clicked on some or all of the links found, and read some or all of the text that appeared on the computer monitor when I clicked on those links. (Because it might be considered hearsay, I omit the text that I read.) Reading what I read on the Internet was one of several causes of my desire not to be a customer of Consolidated.

At some point prior to the start of service from Consolidated, another tenant told me of his or her dissatisfaction at losing cable Internet service.

Subsequent to my unsuccessful attempts to obtain information by telephone, I met with "Art", a representative of the company, on a Saturday (I believe the date to have been April 29, 2006). He originally said that if I wanted to record programming, I could obtain TiVo and a combination receiver-DVR recorder (which I later learned would have entailed a two-year service agreement), at a higher total cost to myself than service without this type of receiver. However, I did not wish to pay to record on this equipment and wanted to continue to record on a standard VHS VCR that I already owned. To simultaneously do this and watch another channel with the equipment that he said was available, I would have needed to pay for two receivers and either a mirroring charge or some other charge. I was not offered the option of a dual-tuner receiver, at any price, and I was not yet aware that they existed. (Instead, the position that I took at the time was essentially that I should not have to pay for two receivers to be able to do what I had been able to do with the cable television utility company's service without needing any receivers.) Eventually, he agreed that Consolidated would provide a splitter (a promise that was never kept). My understanding of his offer was that I would only be able to receive a few channels on whichever equipment (the TV or the VCR) was connected to the splitter and not the receiver, and would be able to receive all other channels on only one piece of equipment (the TV or the VCR, but not both at the same time).

When I considered both the amount that he indicated that I would be required to pay DIRECTV in order to receive service, and the amount that he indicated that I would also be required to pay Consolidated in order to receive service, it became clear to me that my total monthly cost would be substantially higher than my monthly cost for cable television service had been. I believed that the company had previously said that would not be the case, and felt that the prior statement had been dishonest. When I mentioned the prior statement, he asked what I was paying the cable television company and accurately (but, in my opinion, irrelevantly), noted that the figure I gave was similar to the amount that I would be required to pay DIRECTV, but did not include the amount that I would be required to pay Consolidated in the comparison. This representative also said that when comparing what was available from two companies, either that I "must" or that I "have to" consider the "service", and not just the cost. (He did not restrict this statement to comparisons to cable television, and, in particular, did not exclude comparisons to

an individual antenna from a competing service provider from the prohibition against comparisons based solely on cost.) I responded with a negative comment regarding the service provided by him and/or the telephone representative. He then said that he was using the word "service" to mean the channels that were available, and not to mean "customer service". I expressed lack of desire for the channels not included in the less expensive service to which I desired to make a comparison. I also compared requiring me to pay more because I would receive channels that I was not requesting to requiring a male person desiring television service to obtain both television service and tampons, and to pay more than television service without tampons would otherwise cost, even though tampons are not useful to a male person. The apartment manager seemed to find this amusing, but the representative did not rescind the requirement to consider the additional channels in any comparison that I might make to any other service.

The representative also told me that, even if I intended to move from the property in less than a year (as I was later told I must do), I should still enter into a one-year service agreement or contract and that I would still be able to cancel before the expiration of the contract or the service agreement. However, I did not believe him and found his excessive efforts to push me to accept a one-year contract or agreement highly suspicious. My reluctance to agree to a year of payments was partly because he refused to provide a copy of the terms with which I would have to comply for that year. When I requested to see all terms of this arrangement, he told me that he could show me only the terms of Consolidated, and that Consolidated did not have a copy of the terms of DIRECTV to which I would also have to agree to obtain service. He said that DIRECTV had these terms, that he had no copies, and that I would obtain one later, when a receiver was installed in my apartment and it was time to call DIRECTV to activate it. (However, I later learned that Consolidated did have copies of DIRECTV's terms, when the person from Consolidated who installed a receiver brought a copy of DIRECTV's terms and told me to sign something, even though my requests to review the terms in advance had been denied.) At this meeting, the representative also said that tenants would be provided with receivers in the order in which they signed orders for service (with the tenants' credit card numbers), and that, if I waited to sign such an order, I would have no service (from either the satellite system or the local cable company) from when the cable television company's service was made unavailable until when a receiver was eventually installed in my apartment (after the apartments of tenants who signed the agreement with Consolidated without knowing the terms of the agreement with DIRECTV). However, I did not wish to agree to a year of payments before I knew all the terms. This was partly because, in spite of his assurances to the contrary, I was concerned that, if I moved to a location where the service was not available, I might have to continue to pay for the remainder of the one-year term, even though I would not be receiving service.

The representative of Consolidated did eventually tell me orally that an inexpensive option (which I had not been offered when he first told me my options) existed, was provided on a month-to-month basis (without any longer-term contract), would provide me with the small number of channels, would not require any receivers, would provide me with the ability to receive multiple channels simultaneously, and would cost less than \$12 per month, but would not provide me with all the channels that I desired; however, he did not put any of this information in writing and did not mention it earlier when he was trying to persuade me to accept a more expensive package or when he was suggesting that I obtain a second receiver (at further additional cost). He also eventually told orally me that, regardless of which option I elected, I would be able to receive the channels that were included in the inexpensive option as soon as service began in the building, even if a receiver was not yet installed in my apartment; however, he did not put this information in writing and did not mention it earlier, when he was trying to persuade me that I should sign up immediately to avoid a period of no service while waiting for a receiver.

For several reasons, including (but not necessarily limited to) the hearsay I had previously read on the Internet, a belief that this representative had not been honest with me concerning the availability and prices of the services he was promoting, the increase in total cost (including service and receiver) that I anticipated, personal disapproval of his practice of withholding information (which I considered unethical and dishonest), personal disapproval of his company's arrangement with my landlord (which I considered to be an unreasonable anticompetitive restraint of trade between the cable television company and myself and suspected might violate antitrust laws), Consolidated's insistence that even those tenants who

would not be paying by credit card still provide a credit card number, and Consolidated's implausible assurance that these credit cards would not be billed (which I have since been informed was untrue), I decided that, although I did wish to continue to receive television service, I wanted to do so from a company other than the company that he represented. When I asked if I could obtain an individual antenna from another company, he said that the Consolidated had an "exclusive contract" (I now assume this to be the "lease" later mentioned by Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing]) to provide television services in the building. However, I assumed that this applied only to satellite and cable service, and was not aware that it also applied to receipt of analog signals directly from a local broadcaster. Therefore, I purchased an expensive individual analog antenna system (consisting of a "rabbit ears" type antenna and signal-amplifying [boosting] electronics) and attempted to use it, but did not receive an acceptable reception on most channels.

Eventually, Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing] and the apartment manager came to my apartment and delivered a written statement (petitioner's exhibit E) that the landlord would pay any cancellation charges and that Consolidated had agreed to provide the ability to simultaneously receive 15 "local" channels on an unlimited number of televisions, for an amount that was less than \$12 per month, to those who desired only "some service". During this meeting, Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing] also told me orally that he was aware that other tenants (not only myself) had found Consolidated's representative dishonest or untrustworthy, that he regretted signing a contract with Consolidated, that he was bound by the contract to allow them to proceed with the planned discontinuation of service from the local cable television utility company, and that if Consolidated performed in the manner that I (correctly) expected, then he would then break his contract with them, at some future time, but not until after using Consolidated had already been the only way to obtain service. Also during this meeting, Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing] asked what I was paying the cable television company and noted that the figure I gave was similar to the amount that I would be required to pay DIRECTV, but did not include the amount that I would be required to pay Consolidated in the comparison.

I eventually, and reluctantly, agreed to receive the service of this company, because I was not permitted to obtain service in the building without using this company. I even elected an option that required a receiver and was considerably more expensive than the option that did not, because agreeing to a receiver was the only way to receive a service option that included the channels that I desired (although this option also included many channels that I did not desire). However, I was careful to note on the agreement that if the company failed to honor the promise of the splitter, then I was not agreeing to any service that required a receiver, and that I was in no event agreeing to pay for any service that I was not free to cancel at any time.

In defiance of my express written instructions, the company subsequently installed a receiver without a splitter. The installer requested that I sign something. I refused on the ground that he had not installed a splitter. Next, I discovered that, contrary to the representative's assurances that some channels would be available before the receiver was installed and activated, I could not receive any channels. Since I was not being provided with what had originally been agreed (a splitter and the ability to receive some channels before the receiver was activated), I requested to be provided with the less expensive service that did not require a receiver and would allow simultaneous receiving of all 15 "local" channels. Consolidated did not provide this service, but did orally agree to provide DIRECTV service through a central antenna for less than \$12 per month, and to pay DIRECTV's bills themselves, so I did not immediately attempt to enforce the original agreement, even though I still would not receive the ability to access more than one channel simultaneously or to receive any service prior to receiver activation. The oral agreement did not include any "sunset" provision and I did not agree to begin paying DIRECTV's bills at any future time. One of their representatives or employees called DIRECTV to activate the receiver or service; I did not "activate" it myself. Contrary to the earlier statement by a representative or employee of Consolidated, I was not able to receive any channels (even the 15 local channels) until the receiver was activated, which did not occur until the following day. (According to information that I later received from DIRECTV, the activation occurred on May 19, 2006; I believe the date of installation was May 18, 2006.)

I then received a letter or statement in the mail from DIRECTV falsely stating that I had agreed to pay for satellite television services for at least one year, at a rate more than twice that which Consolidated had told me that I would be charged. When I called to dispute this and stated I had never agreed to pay for a full year, or to pay the price stated, the DIRECTV telephone representative stated that the person who activated the service to the receiver in my apartment had put the service in my name and had, by activating the service, created a binding agreement that I would pay for the service for one year. I informed DIRECTV, for the first of several times, that I had not activated the service to the receiver and that Consolidated had done so. When I requested that DIRECTV send a statement retracting the false statement that I had agreed to pay for one year, DIRECTV told me to look for this information on the Internet, but I requested that a paper copy be sent instead. DIRECTV finally agreed to send one, but I have never received it, even though the promise to send it was made during the spring of 2006. I called again, and was told that, contrary to what I had been previously told, DIRECTV could not send a paper statement that I had not agreed to pay for one year (even though it had sent a false paper statement that I had so agreed). Eventually, I stopped receiving bills from DIRECTV and started receiving and paying bills from Consolidated. Someone claiming to be from Consolidated left a message on my answering machine saying that I would not be receiving "any" more bills (from DIRECTV), which I thought meant that Consolidated would be paying all the future bills, per the oral agreement, but I now realize was true only in the more literal sense that the bills would not be sent to my address, not in the sense of whether I would be required to pay them.

Another tenant (not the same one as mentioned earlier) told me that he or she had also been billed more than he or she had been told, that he or she was being required to pay a total of two bills per month (I believe that one was from Consolidated and one was from DIRECTV), and that he or she had not been told that he or she would be required to pay more than one bill per month. I then checked the document that is now my exhibit "H", and found that, if his or her statements to me that he or she had two receivers and did not have them connected to a telephone line were true, then he or she should have been charged more than the amount that he or she said that he or she was told that he or she would be charged. However, I believed his or her allegation that he or she was orally promised a lower price than exhibit "H" indicates and concluded that this person's statement confirmed my earlier belief that Consolidated was dishonest and untrustworthy. (Because Herbert [Landlord's last name was included here in paper filing but was removed from Internet filing], our landlord, has prohibited me from further contacting any tenant on this topic [Petitioner's exhibit "A"], I did not request an affidavit from this tenant, which I otherwise would have done. Should hearsay rules preclude consideration of this conversation for its probative value, I ask that it still be considered for the narrow purpose of establishing my motivation for communicating with the other tenants, which Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing] has put in issue in the letter now designated as my exhibit "A", and for the purpose of determining whether I have reasonable cause to seek another provider, rather than risk being overcharged by Consolidated.)

The same tenant also mentioned having been issued a warning by the apartment manager, said that the warning caused worry about the possibility of being evicted, and stated that the apartment manager had indicated that this warning was the result of the apartment manager overhearing the tenant criticizing the apartment manager (to a third party). (Due to issues of relevance and hearsay, I ask that the last sentence, relating to the warning, be considered under the "state of mind" exception to the hearsay rule, to the extent that it relates to the issue of whether this tenant is in a sufficient state of fear of retaliatory eviction that good cause exists to allow this tenant to provide factual knowledge without his or her identity being disclosed to Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing], and not for its direct probative value.)

At a different time, still another tenant stated orally that he or she already owned an individual antenna, that he or she was not using it, that he or she was receiving service from the same provider as myself (through the central system), that he or she had two receivers in different rooms, that one was not working at the time, that his or her total cost was approximately \$71 per month, and that his or her total cost would have been approximately \$61 per month if he or she was not required to use the central system and to pay Consolidated to do so. This tenant also stated that he or she was unwilling to sign an affidavit, that the reason for this unwillingness

was that "if they [the landlord and apartment manager] want you gone [or out of here, or words to that effect], you'll [or you will] be gone [or out of here, or words to that effect]", and that leaving would cost "three thousand dollars" in moving expenses. The comments in quotes occurred after this tenant had been informed that California law prohibits retaliatory eviction and in a manner that indicated that the tenant felt that the hypothetical involuntary departure would occur, whether or not it was lawful. (Due to issues of relevance and hearsay, I ask that the last two sentences [beginning with the mention of unwillingness to sign an affidavit] be considered under the "state of mind" exception to the hearsay rule, to the extent that it relates to the issue of whether this tenant is in a sufficient state of fear of retaliatory eviction that good cause exists to allow this tenant to provide factual knowledge without his or her identity being disclosed to Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing], and not for their direct probative value.)

Several months subsequent to the start of "service" from Consolidated, Herbert [Landlord's last name was included here in paper filing but was removed from Internet filing], the landlord, sent me a letter (petitioner's exhibit F) saying that the reason why not all the promised services were made available was because of the amount of space that would have been required for the equipment to provide one of the promised services and that my cost would increase by \$18.04 per month to an amount of \$29.99 per month "instead of" (not in addition to) the previous cost (which apparently was \$11.95). The new figure of \$29.99 was more than twice the amount I had been promised. He subsequently called me at work and informed me that he had negotiated with Consolidated (if this occurred, it would have been prior to the installation of the receiver in my apartment) to have a service (not the one to which I had originally agreed) provided at the low cost that Consolidated had told me I would be charged, but only for a few months, and that he thought that this was a good deal. However, I was not told of the terms that he had negotiated (especially that the cost to me would be increasing so dramatically), until after the start of the school year, and several months after when, according to his oral statement, the negotiation had taken place. I had at no time authorized him to negotiate on my behalf. Had I been requested to so authorize him, I almost certainly would have refused to authorize him to negotiate on my behalf for lower rates from Consolidated, because I felt that Consolidated had acted fraudulently (both by misrepresenting their prices and services to me and by using my identity to initiate an one-year agreement with DIRECTV that I had not authorized and had even expressly refused in my written instructions) and had already decided that I would rather receive service from a more honest company than receive a rate reduction from Consolidated. In addition, I did not sign any waiver of my right not to be represented by a person with a conflict of interest (I have learned that Consolidated pays or paid a commission either directly to him or to a business or trust that he owns or controls). I expressed my desire to obtain service from a provider other than Consolidated and he told me that he had "signed a lease" with Consolidated agreeing to "enforce" a rule prohibiting me from obtaining service from any other provider. I requested, but did not receive, a copy of this lease, but believe it to be the "exclusive contract" previously mentioned. (He stated that it had confidential business information.) He also agreed to help enforce any agreement with me that Consolidated had broken, but subsequently reneged. After I complained about the increase in cost and not being notified earlier, he sent me another letter (petitioner's exhibit A), informing me that he was the landlord, that I was prohibited by the rules of the building from having my own antenna anywhere in the complex, even within my apartment, and that he would evict me if I did not obey the rules of the building. In this letter, he noted that both "satellite dishes" and "antennae" [sic] were prohibited, making it clear that I would risk eviction if I operated any individual antenna, even the analog antenna that I had obtained for receiving (for free) local broadcast signals, and not only if I obtained (at my expense) satellite television service from an individual antenna. He did not offer to reimburse me for the value of the analog antenna or the VCR. His letter did make an interesting point that his delay in telling me that the terms that he had negotiated allowed my cost to double within the first few months of service did not violate some provision of law requiring him to give thirty days notice, but my efforts to locate such a provision of law did not result in finding any such provision applicable to residents of apartment buildings facing increases of more than 10%, or any applicable to delays otherwise prohibited by federal regulations. This second letter also noted that he had spent "the better part of an hour" on the telephone with me (presumably referring to when he called me at

work) and was unwilling to "further involve" himself in the dispute between myself and Consolidated. I researched my legal options and began to write this petition no later than September 2006 (as demonstrated by petitioner's exhibit I). (At the time, I intended to the target of the petition to be the contract or other agreement between Consolidated and the landlords who provided it with exclusivity; however, because I was unable to obtain a copy of that document, I later changed the petition to instead challenge the restriction imposed by Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing].)

By the time that this increase was scheduled to take effect (and perhaps even by the time that I was notified of it), I had received advertisements in the mail for both DIRECTV and DISH Network. These included at least one advertisement for satellite television service with a dual-tuner receiver for an amount that was less than \$30 per month, and was equal, within plus or minus 4%, to that which Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing] stated I would be required to pay for service through Consolidated (and considerably less than the amount that I was eventually charged). This would have made my cost per tuner approximately half that which I would have paid according to his letter, because I still had only single-tuner service, because, in violation of our original agreement, Consolidated had not provided a splitter or a dual-tuner receiver. However, I later learned that I was actually billed \$11.95 per month by Consolidated and \$29.99 per month by DIRECTV, for a total of \$41.94 per month, which is approximately \$12 per month more than amount advertised by the competitor, and approximately \$27 per month more than the per-tuner cost of the competitor's service of slightly less than \$15 per month per tuner.

After several months had elapsed, during which I received, and paid the bills sent by Consolidated, and received no other bills for television services, I found out by telephone that the DIRECTV account had a past due balance. DIRECTV also admitted by telephone both that the bills had been sent to the billing address on the account and that the billing address on the account was 620 West 135th Street, Gardena, CA (this is Consolidated's address and not my own) and agreed to immediately send duplicate copies of the bills to my address, so that I could pay them before the scheduled service interruption date. I never received those bills (and did not receive any bills from DIRECTV until after service had already been interrupted). Also, DIRECTV said that I was required to pay them \$29.99 for each month for which they had not been paid, not \$18.04, even though I had already paid Consolidated \$11.95 for each of the months in question and the landlord's letter said that I would be billed a total of \$29.99 "instead of" (not in addition to) \$11.95, and I had never agreed to pay, or been told that I would be billed, \$41.94 per month.

I repeatedly tried to resolve the various aspects of this situation with both DIRECTV and Consolidated, especially:

1. that my name was on an account that I had not opened,
2. that I had not received the bills, and
3. that the total of the bills that I had paid to Consolidated and the amount demanded by DIRECTV exceeded both the amount that I had agreed to pay and the amount stated in the landlord's letter.

DIRECTV continued to insist that, because someone had put my name was on the account, they were entitled to demand payment from me, even if I had not received a bill. (I later learned that section 1584.5 of the California Civil Code prohibits demanding payment from a person who has been sent goods or services which that person has not ordered or solicited, but did not know this at the time.) Each time that I called Consolidated, I would be told that a person (not always the same one) who was needed to resolve the problem was not there and either that I should call back or that they would call me back. At one point, Consolidated admitted that persons for whom Consolidated is not required to pay the DIRECTV bills should not be charged the full \$11.95 (but are still required to pay Consolidated something, in addition to paying the DIRECTV bills), but refused to either pay the DIRECTV bills or refund the difference between the bills that I had paid and the amount that persons for whom they did not pay DIRECTV bills are supposed to be charged. They said that as long as they were not sure whether they were or were not supposed to be paying the DIRECTV bills for certain months, they would neither pay the DIRECTV bills for those months nor return the amount that they had kept in excess of what they would have been entitled to keep if they were not supposed to paying the DIRECTV bills, and that they were not required to do either until they determined which they were required to do (to the

best of my knowledge, they have still neither paid the DIRECTV bills nor returned any of the money I paid them, even though they are aware that they are required to do at least one of these two things, even if not which one). At another point, I mentioned to Consolidated that the total amount that I was being charged was in excess of that which a person prohibited from having an individual antenna could legally be charged and the telephone representative admitted that Consolidated was aware of the law. Also, on many occasions, Consolidated said that they would call back and did not (DIRECTV also did this at least once). When it became clear that I was not going to be able to resolve the situation by telephone or without government intervention, I drove to a police station (twice) to report that a DIRECTV account had been opened in my name by another person. Deputy Benavides told me that I should call Consolidated again and demand to speak to a manager. Subsequently, I called Consolidated and, even after I told them that I was under orders from law enforcement to speak to a manager, was neither allowed to do so nor allowed to speak to the person who I had previously been told by Consolidated would be able to resolve the situation. Meanwhile, I downloaded an Identity Theft Affidavit from the Federal Trade Commission's website, and had my signature notarized, and sent it by certified mail to DIRECTV (at a cost of approximately \$15 for notarization, photocopying, and certified mail). I also telephoned the District Attorney's Office and the landlord. I reached the landlord's answering machine (or voice mail), and told the answering machine (or voice mail) that I was being charged more than his letter stated, that I had reported "Art" (the Consolidated representative mentioned previously) to law enforcement, and that other tenants had told me that they too were having problems, and that I still desired to obtain my service from another provider. I never received a call back and the landlord did not address my complaints; instead, I was served with notice terminating my tenancy. The postage meter date on an envelope from the District Attorney's Office responding to my call and the date of delivery on the return receipt postcard from the certified mail sent to DIRECTV were both the business day immediately prior to the date on which I was served with notice terminating my tenancy.

I found a business card bearing the phrases "Trishna Patel", "consolidatedsmartsystems", and "YOUR PROVEN RESOURCE TO INCREASE ANCILLARY PROFIT" (petitioner's exhibit J) left at my door with handwritten instructions to call a telephone number in another area code. While I no longer recall doing so, I apparently left a message on voice mail or an answering machine telling this person that the service was going to be disconnected unless the bills (which were sent to Consolidated's address and which I had not received) were paid. (I was not offered reimbursement for the telephone call.) I subsequently found a message from her on my answering machine saying that nothing would be disconnected. I called her and told her that DIRECTV had said otherwise; she said that she would call me back, but did not do so. Almost immediately after her message saying that the service would not be disconnected, the DIRECTV service was stopped. I then resumed operating my individual antenna, in violation of the landlord's rule, but I only received an acceptable reception on a few stations. I then called Consolidated on February 24 to terminate its services as well and Consolidated agreed on February 24 that it would remove the equipment from my apartment on February 27. They did not, and, on February 28, I sent an e-mail saying to cancel my account effective retroactively to the date on which DIRECTV terminated the service because Consolidated had not paid the bills that its employee "Art" had agreed would be paid and that "I hereby exercise my right under section 1689(b) of the California Civil Code to rescind any contract between myself and Consolidated Smart Systems." Consolidated sent me a bill for service for March 1-31.

After DIRECTV had stopped service, I finally received a bill, showing a shutoff date prior to the date of the bill. However, even though I had notified DIRECTV repeatedly that I had never opened or activated the account and that another person (who I believe to be Art from Consolidated) did so, and even sent a notarized identity theft affidavit by certified mail, when I finally received this bill, it showed additional charges after both the telephone notification and the date that the certified mail was delivered. I also found a note from Consolidated falsely saying that I had agreed to pay DIRECTV's bills after the first six months and would be responsible for the past due charges (which Art had agreed that Consolidated would pay) as well as any cancellation fees (which the landlord had agreed to pay).

I had central antenna "service" for 9 months and approximately 3 days (May 19, 2006, according to DIRECTV's records, to approximately February 22, 2007). However, I was only able

to make full use of the service for the first 8½ months, because I was forced to spend most of my free time during the final weeks trying to remedy the billing situation, rather than watching television.

I was billed by Consolidated \$11.95 per month, not only for months for which I had service, but also for March 2007, which began after DIRECTV had discontinued service to me (because Consolidated had not paid the bills that were sent only to Consolidated's address), after I had twice told Consolidated to cancel my service, and after the date by which Consolidated had agreed that its equipment would be removed. I was billed \$29.99 per month by DIRECTV for three of the months that were during the period for which I was also billed by Consolidated, including one month which included only three days prior to the day on which DIRECTV stopped service (approximately \$20 was eventually credited for that month, but I was still charged approximately \$10 for those days, or approximately \$100 per month on an annualized basis.) Sending the notarized affidavit that DIRECTV requires to DIRECTV cost me \$10 for notarization and \$4.88 to send by certified mail, return receipt requested. After it was delivered to their address, DIRECTV continued to demand a notarized affidavit, which would presumably cost a similar amount to the first one, and also demanded that I send a various other documentation. DIRECTV also repeatedly claimed not to have received the documentation that I had sent, and for which I had received a return receipt card. During this time, they sent an e-mail saying "After the requested information is received by our office, you will receive a letter in approximately four weeks, informing you of the results of our investigation." Eventually, they admitted that it might have been delivered, but not processed. They still did not admit to receiving it, said that they could not determine where any particular package was, and admitted that they had still not processed it, even though over a month had passed since the date of delivery. This contradicted the earlier statement that they would send the letter in approximately four weeks from receipt of the documentation, unless that statement meant literally from when the appropriate office received it, and not from when it was delivered to the company. I eventually sent another packet of documentation, paying an even larger amount to the postal service for "restricted delivery", but I expect that this package will also be ignored or followed by further demands for documentation.

At some point, I realized that I had two other problems:

1. One of the agreements into which I had not entered said that if the access card was not returned to DIRECTV, I would be charged \$300.
2. It seemed unlikely that Consolidated would remove the receiver before the date that I was required to vacate. If I left it behind and Consolidated later demanded its return, I would not be able to comply, since I would no longer have the apartment. On the other hand, I did not own it and I would be stealing if I brought it with me.

Therefore, on Saturday, March 24, 2007, after the equipment had been in my apartment for more than a month after the termination of service by DIRECTV, I sent Consolidated notice to, within three days of receipt of the notice, either remove the receiver from my apartment or make the payments that they had previously agreed to make, and sent the access card to DIRECTV by insured mail. (I have not received reimbursement for that expense.) I then received an e-mail dated Monday, March 26, 2007, stating (in its entirety):

Stephen,

We at CSS received your legal notices. Upon the review of what you have sent over and requested we are going to be able to provide you the following:

1. CSS will pay your outstanding DTV balance.
2. If you wish to receive TV, the only option at Ponderosa will be the \$29.99 Preferred Choice Package.
3. We are willing to waive the \$6.95 CSS service fee.

If you ARE NOT interested in continuing your service- we will just we will simply pay the DTV bill. You can keep the equipment or we can schedule a technician to come pick up. Once

again, there is no other way to receive television- but to go through Consolidated. If that is not a problem, then we hope we have solved the issue once and for all.

-Consolidated Smarts [sic] Systems
(1800) 262-1327

Had they actually made the payment, this might have solved the billing issue (although not the 47CFR1.4000 issue), but merely saying that they would do so did not solve either issue, since I had no reason to believe them. Indeed, even though the three day period for compliance expired under California law at midnight Thursday, March 29, 2007, Consolidated has not removed the receiver and I have not received confirmation that they have paid the DIRECTV bill and have not received a response to a request that I sent for the date on which they will do so.

As noted before, had I paid the DIRECTV bills in time to avoid a service interruption (even though I had not received the bills), then I would have continued to be charged \$29.99 per month by DIRECTV and to be charged some amount by Consolidated (presumably, at least \$11.95 per month, since they charged that much even after I told them not to continue service).

Additionally, Consolidated stated on one or more of the notes that was left on my door prior to the original installation that they will not be providing Internet service. I have seen numerous television commercials for satellite-based Internet service, but I am not able to receive that service because Consolidated does not provide it through the central antenna and Mr. [Landlord's last name was included here in paper filing but was removed from Internet filing] refuses to allow me to use an individual antenna.

Finally, to resolve any confusion that may result from the multiple copies of the rental agreement that appear as petitioner's exhibit B, I have been the sole resident of the apartment since March 1, 2006, but my employer paid the rent for March 2006 and April 2006, for reasons unrelated to this matter. I paid the rent for May 2006 and all subsequent months. The original rental agreement was signed by me, but had to be replaced by the second agreement, signed by an officer of the company that employs me, because that company was going to pay the rent for the first two months and needed certain paperwork to satisfy tax laws, etc. That rental agreement (the second) applied to March 2006 and April 2006. The third rental agreement was signed in April and applied to all subsequent months. (My signature is on the first rental agreement. I believe that I also signed the third rental agreement, but my copy of the third rental agreement does not have my signature. I believe that the landlord or apartment manager has the copy that I signed.) Also, although all three rental agreements provided for an apartment, I believe that only the third and final rental agreement, applying to May 2006 and subsequent months, provided for a parking space as well.

I, Stephen Weinstein, hereby swear under penalty of perjury that the foregoing is true and correct to the best of my knowledge.